NASDAQ OMX®

GOING PUBLIC
上市

A Guide for Chinese Companies to Listing on the US Securities Markets
中国企业在美国证券市场上市指南

Published by Globe Business Publishing in association with The NASDAQ Stock Market®, with contributions from:
由Globe Business Publishing公司和纳斯达克股票市场联合发表，特别鸣谢以下公司：

Goldman Sachs
pwc
ICR
AON
citi
SIMPSON THACHER & BARTLETT LLP
RR DONNELLEY

Editors:
Jo Moore and Liz Rutherford-Johnson

Design:
Fran Lane

Production:
Nicky Phillips

Publications manager:
Harriet Marchant

Publisher:
Tim Dempsey

Printing and binding:
RR Donnelley Roman Financial

Going public: A guide for Chinese companies to listing on the US securities markets

is published by
Globe Business Publishing
New Hibernia House
Winchester Walk
London SE1 9AG
United Kingdom

Tel: +44 20 7234 0606
Fax: +44 20 7234 0808

First published 2006
ISBN 978-1-905783-60-1

编辑：
Jo Moore 及 Liz Rutherford-Johnson

设计：
Fran Lane

制作：
Nicky Phillips

出版经理：
Harriet Marchant

出版者：
Tim Dempsey

印刷及装订：
RR Donnelly Roman Financial

上市：中国企业在美国证券市场上市指南

由Globe Business Publishing发行
New Hibernia House
Winchester Walk
London SE1 9AG
United Kingdom

电话：44.20.7234.0606
传真：44.20.7234.0808

2006年第一次出版
ISBN 978-1-905783-60-1

Contents 目录

Going Public

Taking your company through a public offering for the US securities market is a major undertaking for any entrepreneur. The event is a source of pride, an opportunity for business growth and a serious legal responsibility. The second edition of *Going Public: A Guide for Chinese Companies to Listing on the US Securities Markets* brings together valuable perspectives from key organizations involved in a public offering to ensure that readers are aware of the principal issues that arise. Of course, this publication is not intended to be exhaustive and should not be relied upon as a substitute for specific legal or financial advice.

This guide assumes that while you may be seriously considering a listing, you may not have selected a stock market – or decided what type of listing is right for your company.

Whatever your specific plans, *Going Public* can help you to anticipate what may be required from your company in dealings with the US Securities and Exchange Commission, other US regulators, investors and securities analysts. Designed to clarify the various steps involved in listing on the US markets, it covers the roles of the organizations most closely involved with the listing process, as well as providing illustrative timetables to explain the various stages of listing.

The NASDAQ OMX Group hopes that up find this publication helpful and wishes you great success.

1

Introduction

The NASDAQ Stock Market®

A listing on NASDAQ® gives Chinese companies high visibility and access to a wide pool of investors worldwide. NASDAQ promotes corporate growth and entrepreneurship by providing companies, market participants and investors with one of the highest-quality markets in the world.

Taking a company through a public offering on a US securities market is a major undertaking – at once a source of pride, an opportunity for business growth and a significant legal responsibility. In anticipation of going public, it is a good idea to establish and develop the corporate environment and infrastructure necessary to support a publicly held company prior to listing. This includes addressing housekeeping issues, such as organizing financial records, establishing or reviewing internal controls, and reviewing company bylaws and stock option plans.

Before going public, a company should consider establishing and reviewing policies for corporate communications, developing an investor and public relations program and setting aside resources to communicate with new constituents. It is also necessary to develop standards for timely annual and quarterly Securities and Exchange Commission (SEC) filings, and disclosure of material information.

Going public: A guide for Chinese companies to listing on the US securities markets, which was developed by its sponsors to help companies negotiate the complicated initial public offering (IPO) process, covers these topics and more. It explains the various steps to listing and offers a brief overview of the benefits of listing on the NASDAQ Stock Market, the US listing market of the NASDAQ OMX Group, Inc. Goldman Sachs outlines the role of the investment bank in facilitating an IPO, while Simpson Thacher & Bartlett covers legal issues that should be considered. An accountancy perspective is provided by PricewaterhouseCoopers, and ICR offers an insight on building a solid investor relations program. Depositary receipts are dealt with by CitiBank. The importance of insurance is covered by AON, while RR Donnelley discusses the unique conditions that often surround the printing and filing of SEC documents. We hope the information in this guide is of benefit to companies seeking to list on a US equities market.

Listing on the NASDAQ Stock Market – an overview

NASDAQ OMX's mission is to promote corporate growth and entrepreneurship by providing companies, market participants and investors with the highest-quality equity market in the world – a market that is fast, reliable, highly transparent and deeply liquid, that has state-of-the-art trading efficiency; and the highest standards for regulatory oversight and corporate governance.

The NASDAQ OMX Group is the world's broadest and most diverse exchange company. It delivers trading, exchange technology, and public company services across six continents, and with over 3,600 companies it is number one in worldwide listings among major markets. NASDAQ OMX offers multiple capital-raising solutions to companies around the globe, including its US listings market, the NASDAQ Stock Market, and the OMX Nordic Exchange, including First North. The company offers trading across multiple asset classes including equities, derivatives, debt, commodities, structured products and exchange-traded funds. NASDAQ OMX technology supports the operations of over 70 exchanges, clearing organizations and central securities depositories in more than 50 countries. OMX Nordic Exchange is not a legal entity, but describes the common offering from NASDAQ OMX exchanges in Helsinki, Copenhagen, Stockholm, Iceland, Tallinn, Riga and Vilnius. For more information about NASDAQ OMX, visit www.nasdaqomx.com.

The NASDAQ Stock Market, NASDAQ OMX's US listings market, lists over 3,000 companies, representing $4.6 trillion in total market value. Seventy-one percent of C-levels polled say that NASDAQ is the exchange for innovation. The NASDAQ Stock Market is home to two of the three largest US companies, three of Fortune's top five World's Most Admired Brands and seven of Fortune's Top 10 Fastest Growing Companies. It is home to companies that are leaders across all areas of business, including technology, retail, communications, financial services, transportation, media and biotechnology. Historically, NASDAQ has attracted more IPOs than any other US exchange. Trades are executed through a sophisticated computer and telecommunications network – a system that transmits timely, critical trading information to every investor. Over 150 registered market makers support NASDAQ companies by providing liquidity to facilitate trading in their stock. An average of 29 market makers cover each NASDAQ Global Select and NASDAQ Global Market company; as many as 75 are registered market makers in some securities and many others make markets without registering. No other US market can match this.

Through the NASDAQ Select Market Maker Program, listed companies gain greater transparency into the role that market makers play in the trading of their stock and allow for more interaction between the market-making community and listed companies. The NASDAQ Select Market Maker Program helps listed

companies, traders, institutional investors and individual investors by creating a metric beyond volume.

Exclusive services for NASDAQ-listed companies

NASDAQ-listed companies benefit from a portfolio of exceptional services and information programs geared to provide value in all stages of accessing the capital markets. From one-to-one personal contacts to fully automated online access, companies can choose from several different services and information channels from its wholly owned subsidiaries and proprietary services. NASDAQ OMX Global Corporate Solutions also works with various strategic alliance partners to offer companies value-added products and services that public companies require.

NASDAQ OMX Corporate Solutions focuses on corporate activities that are critical to any public company. As the first and only exchange dedicated to owning and operating Corporate Solutions, NASDAQ OMX provides public and private companies with technology that powers global business communications, including a suite of tools such as solutions for investor relations, corporate communications and board support. In listening to companies' needs, NASDAQ OMX Corporate Services has developed four key areas of focus:

- intelligence;
- governance;
- communications; and
- visibility.

Intelligence solutions

By utilizing solutions from NASDAQ OMX's intelligence suite, you will never have to worry about missing out on a valuable opportunity for your business. Monitor the markets, your stock performance and that of your peers with powerful analytic tools to support your internal and external workflow.

Relationship Manager

The NASDAQ Relationship Manager is an integral part of the value-added services that NASDAQ-listed companies receive. Every listed company receives one dedicated, day-to-day point of contact who is experienced and knowledgeable on market matters and other issues that affect a company's business.

Market Intelligence Desk (MID)

A team of market professionals working with leading technology delivers stock updates and trading analysis in real time, so you will always be in the know. Listing with NASDAQ means you will have a dedicated MID director on call and ready to provide you with detailed information on market activity at all times.

Factset with NASDAQ OMX Corporate Intelligence

This incorporates the broadest scope of data, customizable specifically to your workflow and available in one easy-to-use product at your desk or on the go.

Corporate Intelligence

This integrates all of the key elements that an investor relations officer needs to manage corporate shareholder communications, capital market information, investor contact management and board-level reporting in an easy-to-use workflow environment.

Advanced Intelligence

An unprecedented stock surveillance solution that keeps you and your management team apprised of what is driving your stock's trading activity in real time. Get immediate analysis in both text and graphical format delivered straight to your inbox, including a proprietary five-star ranking system of major institutional investors and exclusive 24/7 'push' and 'pull' reports triggered automatically by defined trading thresholds.

Investor Analytics

These combine experienced stock surveillance analysts with NASDAQ OMX technologies to provide insight into institutional activity, patterns and historical tendencies by utilizing a mosaic of public, subscription and issuer-based data sources to monitor daily movement of your stock, as well as to alert you to any significant changes.

NASDAQ online

A comprehensive window into stock performance www.nasdaq.net, is an effective strategic equity management and decision-making tool. Easily manage your investor relations functions, understand how your stock is perceived in the marketplace, see how stock is trading, follow competitors and track the market's activity at any given moment. Automatic system-generated reports and spreadsheets ensure that your communication efforts with senior management will be clear and informative.

Morningstar Alliance

Morningstar Alliance is one of the largest and leading sources of independent investment research. With this partnership,

NASDAQ OMX is the first US-based exchange to provide complimentary research to all listed companies, with reports that include information regarding estimates, valuations, insightful analysis and company profiles.

Rivel Research

Rivel Research provides your company with a continuous series of investor sentiment assessments. Each month we interview three or more key investors and other targeted stakeholders to understand how they are viewing and valuing your company. This insight is then synchronized with NASDAQ OMX's surveillance service to provide the most comprehensive view of your trading activity.

Governance solutions

Today's business environment is influenced by a fluctuating economy, greater scrutiny and increased regulatory requirements, all of which are creating challenges and increased responsibilities for boards of directors.

Directors Desk

A complete turnkey, fully hosted online board management solution, Directors Desk streamlines your board's workflow while minimizing the time and paperwork involved in keeping directors informed. Intuitive, customizable and secure, it enables your board to stay connected and organized at all times.

National Association of Corporate Directors

NASDAQ OMX's strategic partnership with the National Association of Corporate Directors provides boards with the education and services necessary for improved governance in today's more transparent environment. Together, we will collaborate on several initiatives designed to bring the exchange and board members together through discounted educational programs and events, as well as superior content integrated with NASDAQ OMX's online board portal, Directors Desk.

Whistleblower Hotline

The hotline provides employees and others with a secure means of reporting incidents, while providing you with a comprehensive report of incidents without any human interference. Auditable, cost efficient and easy to use, the Whistleblower Hotline also meets the requirements of the Sarbanes-Oxley Act, the Ontario Securities Commission and the Audit Committee Rule of the Canadian Securities Administrators Guidelines (Multilateral Instrument 52-110).

The Aon D&O Peer Benchmarking Survey Report

The report provides valuable insights on the directors' and officers' (D&O) insurance purchasing practices of NASDAQ-listed companies, along with key data on industry issues and trends. Providing the requisite due diligence needed to demonstrate your company's D&O coverage comparable to other firms in a similar market cap or industry sector, this report keeps your team in line to put you ahead of the competition.

XBRL Filing Solutions

This offers a robust suite of eXtensible Business Reporting Language (XBRL) tagging services to ensure that your XBRL instance documents are filed concurrently with your standard quarterly and annual reports (10-Qs and 10-Ks). Using proprietary XBRL translation software and technology to tag financial statements, you will save the time and money usually required to complete these filings.

CRD Analytics Solutions

CRD Analytics Solutions allow you to create financial indexes, sustainability ratings, analytical reports and portfolio diagnostics to help your company manage risk and determine opportunity in the marketplace.

Communications solutions

How you choose to present your brand and corporate message is one of the most important things you can do for your business. The NASDAQ OMX Communications suite of services includes all the necessary tools you need to communicate with your investors and build relationships with stakeholders, investors and the financial community alike.

GlobeNewswire

One of the world's largest press distribution networks just became even bigger as a result of strategic partnerships with Osaka Securities Exchange, Japan's largest derivatives exchange. With self-serve or editorial models, search engine optimization, customized targets and Edgar filing services, GlobeNewswire is an easy-to-use and cost-effective way to distribute your news, earnings, announcements, press releases and media advisories directly to journalists, analysts, newswires, newsrooms, databases, websites and business professionals.

Webcenter Solution

A one-stop shop for investor relations (IR) and public relations website development, Webcenter Solution helps ensure that your

websites include all the necessary content to tell your story online. Our developers work with your design team to match seamlessly the look and feel of your corporate site, maintaining brand continuity and maximum flexibility in content, features and navigation.

Interactive Media Solutions

Interactive Media Solutions can help capture the energy of your message with both live and produced video that takes branding to a whole new level. Share videos on your IR website, social media platforms and conferences; while event tracking captures attendee statistics to keep your team in the know about who is accessing your information.

Print and Mail Distribution Solutions

Whether fulfilling requests from your IR website or collating and shipping materials to an investor conference, we handle all the details and provide a comprehensive reporting tool so that you never run out of inventory.

SocialStream

Our one-stop social media solution allows you to create a unique, customizable, multimedia experience from a single platform that combines content, videos, product demos, real-time audience response and so much more to your corporate and IR websites. Post blogs, press releases, white papers, videos and any external communication while including live streaming feeds from your Facebook and Twitter sites. Include links to all your social outlets and provide your customers with really simple syndication options that allow them to keep track of every post or area of interest.

Visibility solutions

Stay on your shareholders' radar by leveraging our visibility channels, which bring valuable, authoritative information to millions of institutional and retail investors every day.

The NASDAQ MarketSite

Located in the heart of Times Square, the NASDAQ MarketSite is the epicenter for news and events. Each day some of the world's most prestigious business leaders preside over the market's open and close. With spectacular, panoramic views and the ultimate high-visibility setting, the NASDAQ MarketSite is a one-of-a-kind venue for your corporate meetings, product launches, press conferences and analyst days.

Advertising solutions

Helping to bring your messaging to the next level, you can make a huge impact with online advertising opportunities on NASDAQ.com and NASDAQ.net that target the millions of users who visit our sites every day for in-depth trading analysis and quotes. Seven stories tall and viewed by over 750,000 people daily, advertising on the MarketSite Tower creates the ultimate outdoor consumer experience.

CEO Signatures series The series helps you to connect with the investment community through a high-profile webcast interview hosted at the NASDAQ Marketsite. A face-to-face interview with a veteran financial journalist puts your company front and center with institutional and retail investors on a platform where they can discuss their vision, strategies and new initiatives.

International investor programs

NASDAQ OMX has a range of programs and services to raise investor interest and provide a forum to engage international investors one on one. NASDAQ-listed companies have access to these international programs, as well as the NASDAQ OMX Institutional Investor Center℠.

Phoenix - IR Road Show Program

Phoenix-IR is one of Europe's leading independent IR consulting firms, offering a bespoke European road show service to NASDAQ-listed companies with $1 billion in market cap or more. Half of the top 20 largest asset managers in the world are now based in Europe and Europeans have the highest proportion of their portfolios invested in international equities. Phoenix-IR's bespoke road show and targeting service provides quality contact building while using senior management time effectively.

NASDAQ Core Services Program

This program provides companies with a complimentary portfolio of services currently offered through NASDAQ OMX Corporate Services. The Core Services Program is designed to help companies minimize risk, maximize efficiency and increase transparency – at no extra cost. To review and register for the complimentary services that you would like to use, visit NASDAQ Online at www.nasdaq.net.

Steps for listing on NASDAQ

To list securities on the NASDAQ Stock Market, a company is required to meet certain initial quantitative and qualitative requirements and to submit an application. These requirements are outlined in the

tables, along with the basic steps regarding the application process to list securities initially on the NASDAQ Global Select Market, the NASDAQ Global Market or the NASDAQ Capital Market®.

Listing standards

Companies that choose to list their securities on the NASDAQ Stock Market must meet minimum initial and continued inclusion financial requirements. These requirements are designed to facilitate capital formation for companies worldwide and, at the same time, protect investors and prospective investors in those companies. NASDAQ's quantitative listing requirements generally require that companies meet higher thresholds for initial listing than continued listing, thus helping to assure that companies have reached a sufficient level of maturity prior to listing. NASDAQ also requires listed companies to meet stringent corporate governance standards, standards to which NASDAQ itself adheres. NASDAQ-listing standards are transparent to companies and investors alike, and are rigorously enforced. Companies can find listing forms and instructions for applications online at .

At NASDAQ, we believe your listing should represent more than just membership in a stock market – it should provide tangible value back to your company and your shareholders. That is why we offer listing on three different tiers, providing a broad cross-section of companies' opportunities to increase liquidity and reach. In fact, NASDAQ's Global Select Market has the highest initial listing standards of any market in the world. Over 1,000 NASDAQ-listed companies qualify under these standards to create a prestigious, world-class, top-tier marketplace. NASDAQ itself adheres to these most stringent standards, setting an example of best-in-class governance.

Disclaimers

This publication is designed to provide accurate and authoritative information, but is provided with the understanding that the publisher is not engaged in rendering legal, accounting or other professional advice. If legal or other expert assistance is required, the services of a competent professional should be sought.

Some NASDAQ OMX Corporate Solutions services are offered by third-party providers. NASDAQ OMX makes no representations and disclaims all liability and all warranties with regard to these services. The use of these services does not assure a company's compliance with NASDAQ listing standards, NASDAQ OMX's standard for the dissemination of material news or any other NASDAQ, SEC or other regulatory obligation.

Contacting NASDAQ OMX

For information regarding the strategic advantages of listing on NASDAQ, companies are encouraged to contact NASDAQ OMX Global Corporate Client Group management.

Bruce Aust

Executive vice president, NASDAQ OMX Global Corporate Client Group

Tel +1 212 401 8746

bruce.aust@nasdaqomx.com

For information regarding NASDAQ-listing standards or the application process, please contact:

William Slattery

Vice president, NASDAQ Listing Qualifications

Tel +1 301 978 8088

william.slattery@nasdaqomx.com

Nelson Griggs

Senior vice president, NASDAQ OMX Global Corporate Client Group

Tel +852 (2167) 1907

nelson.griggs@nasdaq.com

NASDAQ Global Select Market Initial Listing Requirements[1]				
Requirements	**Standard 1 Listing Rules 5315(e) and 5315(f)(3)(A)**	**Standard 2 Listing Rules 5315(e) and 5315(f)(3)(B)**	**Standard 3 Listing Rules 5315(e) and 5315(f)(3)(C)**	**Standard 4 Listing Rules 5315(e) and 5315(f)(3)(D)**
Pre-tax earnings[2] (income from continuing operations before income taxes)	Aggregate in prior three fiscal years ≥ $11 million and each of the two most recent fiscal years ≥ $2.2 million and each of the prior three fiscal years ≥ $0	N/A	N/A	N/A
Cash flows[3]	N/A	Aggregate in prior three fiscal years ≥ $27.5 million and each of the prior three fiscal years ≥ $0	N/A	N/A
Market capitalisation[4]	N/A	Average ≥ $550 million over prior 12 months	Average ≥ $850 million over prior 12 months	$160 million
Revenue	N/A	Previous fiscal year ≥ $110 million	Previous fiscal year ≥ $90 million	N/A
Total assets[5]	N/A	N/A	N/A	$80 million
Stockholders equity[5]	N/A	N/A	N/A	$55 million
Bid price[6]	$4	$4	$4	$4
Market makers[7]	3 or 4	3 or 4	3 or 4	3 or 4
Corporate governance[8]	Yes	Yes	Yes	Yes

1. These requirements apply to all companies, other than closed-end management investment companies. A closed-end management investment company, including a business development company, is not required to meet the financial requirements of Rule 5315(f)(3). If the common stock of a company is included in the NASDAQ Global Select Market, any other security of that same company, such as other classes of common or preferred stock that qualifies for listing on the NASDAQ Global Market, shall also be included in the NASDAQ Global Select Market. A company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, as described in IM-5101-2, is not eligible to list on the NASDAQ Global Select Market.
2. In calculating income from continuing operations before income taxes for purposes of Rule 5315(f)(3)(A), NASDAQ will rely on a company's annual financial information as filed with the SEC in the company's most recent periodic report and/or registration statement. If a company does not have three years of publicly reported financial data, it may qualify under Rule 5315(f)(3)(A), provided that it has:
   • reported aggregate income from continuing operations before income taxes of at least $11 million; and
   • positive income from continuing operations before income taxes in each of the reported fiscal years.
   A period of less than three months shall not be considered a fiscal year, even if reported as a sub-period in the company's publicly reported financial statements.
3. In calculating cash flows for purposes of Rule 5315(f)(3)(B), NASDAQ will rely on the net cash provided by operating activities reported in the statements of cash flows, as filed with the SEC in the company's most recent periodic report and/or registration statement, excluding changes in working capital or in operating assets and liabilities. A period of less than three months shall not be considered a fiscal year, even if reported as a stub period in the company's publicly reported financial statements.
4. In the case of a company listing in connection with its IPO, compliance with the market capitalization requirements of Rules 5315(f)(3)(B) and 5315(f)(3)(C) will be based on the company's market capitalization at the time of listing.
5. In computing total assets and stockholders' equity for purposes of Rule 5315(f)(3)(D), NASDAQ will rely on a company's most recent publicly reported financial statements subject to the adjustments described in Rule 5310(j).
6. The bid price requirement is not applicable to a company listed on the NASDAQ Global Market that transfers its listing to the NASDAQ Global Select Market.
7. A company that also satisfies the requirements of Rule 5405(b)(1) or 5405(b)(2) is required to have three market makers. Otherwise, it is required to have four market makers. An electronic communications network (ECN) is not considered a market maker for the purpose of these rules.
8. In addition to the above quantitative requirements, companies must comply with all corporate governance requirements as set forth in the Rule 5600 Series.

NASDAQ Global Market Initial Listing Requirements[1]				
Requirements	**Income Standard Listing Rules 5405(a) and 5405(b)(1)**	**Equity Standard Listing Rules 5405(a) and 5405(b)(2)**	**Market Value Standard Listing Rules 5405(a) and 5405(b)(3)[2]**	**Total Assets/Total Revenue Standard and 5405(a) and 5405(b)(4)**
Income from continuing operations before income taxes (in latest fiscal year or in two of last three fiscal years)	$1 million	N/A	N/A	N/A
Stockholders' equity	$15 million	$30 million	N/A	N/A
Market value of listed securities[3]	N/A	N/A	N/A	N/A
Total assets and total revenue (in latest fiscal year or in two of last three fiscal years)	N/A	N/A	N/A	$75 million and $75 million
Publicly held shares[4]	1.1 million	1.1 million	1.1 million	1.1 million
Market value of publicly held shares	$8 million	$18 million	$20 million	$20 million
Bid price	$4	$4	$4[2]	$4
Shareholders (round lot holders)[5]	400	400	400	400
Market makers[6]	3	3	4	4
Operating history	N/A	2 years	N/A	N/A
Corporate governance[7]	Yes	Yes	Yes	Yes

1. Companies must meet the bid price, publicly held shares and round lot holders' requirements as set forth in Rule 5405(a) and at least one of the standards in Rule 5405(b).
2. Seasoned companies (those companies already listed or quoted on another marketplace) qualifying only under the Market Value Standard must meet the market value of listed securities and the bid price requirements for 90 consecutive trading days prior to applying for listing.
3. The term 'listed securities' is defined as "securities listed on NASDAQ or another national securities exchange".
4. Publicly held shares' are defined as total shares outstanding, less any shares held directly or indirectly by officers, directors or any person that is the beneficial owner of more than 10% of the total shares outstanding of the company. Entities in which an officer, director or owner of 10% has voting and/or dispositive power, such as a typical employee stock option plan, are excluded from publicly held shares.
5. Round lot holders are shareholders of 100 shares or more. The number of beneficial holders is considered in addition to holders of record.
6. An ECN is not considered a market maker for the purpose of these rules.
7. In addition to the above quantitative requirements, companies must comply with all corporate governance requirements as set forth in the Rule 5600 Series.

NASDAQ Capital Market Initial Listing Requirements[1]			
Requirements	**Equity Standard Listing Rules 5505(a) and 5505(b)(1)**	**Market Value of Listed Securities Standard Listing Rules 5505(a) and 5505(b)(2)[2]**	**Net Income Standard Listing Rules 5505(a) and 5505(b)(3)**
Stockholders' equity	$5 million	$4 million	$4 million
Market value of publicity held shares	$15 million	$15 million	$5 million
Operating history	2 years	N/A	N/A
Market value of listed securities[3]	N/A	$50 million	N/A
Net income from continuing operations (in the last fiscal year or in two of the last three fiscal years)	N/A	N/A	$750,000
Bid price	$4	$4	$4
Publically held shares[4]	1 million	1 million	1 million
Shareholders (round lot holders)[5]	300	300	300
Market makers[6]	3	3	3
Corporate governance[7]	Yes	Yes	Yes

1. Companies must meet the bid price, publicly held shares, round lot holders and market makers requirements as set forth in Rule 5505(a) and at least one of the standards in Rule 5505(b).

2. Seasoned companies (those companies already listed or quoted on another marketplace) qualifying only under the Market Value of Listed Securities Standard must meet the market value of listed securities and the bid price requirements for 90 consecutive trading days prior to applying for listing.

3. The term 'listed securities' is defined as "securities listed on NASDAQ or another national securities exchange".

4. 'Publicly held shares' are defined as total shares outstanding, less any shares held directly or indirectly by officers, directors or any person who is the beneficial owner of more than 10% of the total shares outstanding of the company. In the case of alternative dispute resolution, at least 400,000 shall be issued. Entities in which an officer, director or owner of 10% has voting and/or dispositive power, such as a typical employee stock option plan, are excluded from publicly held shares.

5. Round lot holders are shareholders of 100 shares or more. The number of beneficial holders is considered in addition to holders of record.

6. An ECN is not considered a market maker for the purpose of these rules.

7. In addition to the above quantitative requirements, companies must comply with all corporate governance requirements as set forth in the Rule 5600 Series.

Dream. Do.

Two verbs too often separated.

Dream without doing and your ideas wither on the vine.

Do without dreaming and you bring nothing new to the world.

But the moment dream and do come together, great things happen.

Medical breakthroughs happen. Tech revolutions happen.

A greener planet happens.

One global exchange is dedicated to helping those who dream it,

do it, no matter how steep the climb: NASDAQ OMX.

That's why, every day, we give the world's most innovative

ideas the most innovative means of execution.

Looking to take a dream as far as it will go?

Consider this your launch pad.

NASDAQ OMX® Dream it. Do it.℠

2

The role of the investment bank

Goldman Sachs (Asia) LLC

An initial public offering (IPO) is a transformational event in the life of a company, setting the foundation for its continued growth and development. The investment bank plays a critical role in the IPO and is involved in every phase of the process.

An initial public offering (IPO) is a transformational event in the life of a company, setting the foundation for its continued growth and development. The investment bank plays a critical role in the IPO and is involved in every phase of the process, from the organizational "kick-off" meeting to the first day of trading in the stock and beyond. Key responsibilities of the investment bank in an IPO include:

- overall responsibility for transaction execution and success;
- coordinating the documentation and preparation process;
- determining the optimal structure for the offering;
- helping to determine the appropriate valuation for the company; and
- preparing the company to communicate its equity story to the market.

In many ways, the investment bank acts as the deal captain, providing strategic input and guidance while also ensuring that all parties involved are well coordinated and working together to achieve the company's goals for the IPO.

Why an IPO?

Before undertaking an IPO process, the company should carefully consider the reasons for becoming a public company, as the process is time consuming and requires a significant amount of management's time and focus.

Financing to fund future growth

An IPO will provide the company with an opportunity to raise significant new capital from a diversified base of investors to fund future growth. Importantly, the IPO will also serve as a platform for future capital raisings by the company through secondary equity offerings and debt issuance.

Providing liquidity and creating a receptive market for future investor sell-downs

An IPO will allow pre-IPO or management shareholders to monetize their holdings in a transparent, organized manner. A successful IPO will also create a receptive market for additional investor sell-downs in the future.

Establishing attractive acquisition currency for strategic initiatives

Post-IPO, an issuer may use its shares as currency in acquisitions or other strategic initiatives, providing an alternative source of financing.

Enabling employee incentive programs

With publicly traded shares, a company can have transparency on value when granting stock options and awarding other equity incentives to employees, which will be a useful tool to align their interests with those of the company and allow them to participate in the continued growth and success of the company.

Branding opportunity

An IPO will serve as an introduction of the company to investors globally and provide a branding "event" which will significantly enhance the public profile of the company. The IPO will also likely be reported in leading news and business publications, providing greater visibility of the company to potential partners and customers.

Why an IPO in the United States?

A growing number of Chinese companies are choosing to list in the United States. Last year was a record year for US IPOs from China, with 38 companies choosing to go public on a US exchange, raising over $4 billion in capital. A US IPO can offer a number of unique advantages for a Chinese company.

Access to the deepest pool of investor capital in the world

The US investor base is the largest in the world, with vast pools of capital available for investment and a broad spectrum of investor types and styles. A US listing will provide greater flexibility in future financing and help diversify the company's investor base.

Positioning alongside world-class sector leaders

A US listing will allow the company to compare itself against the leading global companies listed on US exchanges. A US IPO will make it easier for investors to reference the equity story and valuations of these sector leaders, rather than just regional players and comparables.

Increased transparency and disclosure

The US disclosure and internal controls framework is among the most comprehensive in the world. Being a US-listed company will inspire confidence in investors that the company is adhering to the highest standards of corporate

governance and disclosure, and lend it further credibility and prestige.

When is the right time for the IPO?

An equally important consideration in the decision to pursue an IPO is determining the appropriate point in the company's lifecycle to become publicly owned. While there are a number of technical requirements for an IPO (set out in another chapter), the following factors are key to a successful IPO.

Comprehensive, viable business strategy

An important part of the IPO process will be to present a comprehensive business strategy to investors that lays out key benchmarks for growth and profitability and can enhance the company's competitive positioning over the long term. Such strategies should be clearly and easily communicable to investors.

Established track record of operating performance

The company should be able to demonstrate a track record of strong operating performance.

Market conditions

While company-specific considerations are most important in an IPO, market conditions may also have an impact. For instance, industry trends may influence the way in which investors evaluate a company, while equity market and macroeconomic conditions may affect investor appetite for IPOs and, potentially, aftermarket performance.

An investment bank will be able to help companies analyze each of the above considerations and help to create a roadmap for becoming a public company listed in the United States.

Preparing for the IPO

Once the decision to become a public company has been made, the company should begin preparations for the IPO. The objective during this preparatory phase should be to position the company to be well received by investors and to adopt "best practices" in preparation to become a public company.

Presenting the company

An important element in preparing for the IPO will be to ensure that investors can properly evaluate the business and management's ability to execute the business plan.

The company should be able to present a set of financial statements and disclosure which accurately represent the business, its financial condition, changes in its financial condition and results of operations. These should include the following:

- key performance indicators and drivers of the results of operations;
- growth trajectory of the business and the sources of such growth;
- appropriate level of detail behind the cost structure;
- margins representative of true profitability of business (or expected margin improvement);
- financial position in terms of cash, debt and working capital;
- major capital investment spending requirements; and
- trends and uncertainties.

In addition, it will be important to show a "clean company" to the market, with:

- no outstanding question marks (eg, over management turnover, litigation); and
- reporting and compliance systems already in place.

Key members of the management team should be in place, including:

- business related – including the chief executive officer (CEO), chief financial officer (CFO) and general counsel;
- finance related – including an accounting team with US generally accepted accounting practices and Security and Exchange Commission (SEC) reporting experience; and
- market related – including investor relations and internal audits.

Corporate governance and internal systems

The company should also ensure that it has the appropriate infrastructure in place not only to meet listing requirements, but also to handle the increased scrutiny and disclosure requirements of being a public company.

Establishing a board of directors with the appropriate corporate governance structures will be a key priority for the IPO:

- Independent directors should be in place at the time of the IPO (and ideally the majority of the board will be independent directors over time).
- Investors will focus on the independence of the board (or lack thereof).
- Pre-IPO is the best time to address governance and shareholder defense issues.
- The company should establish required and best practices committees and carefully consider the composition of the

audit th committee, compensation committee and the corporate governance and nominating committee.
- The company should implement required and best practice policies such as the code of ethics, insider trading policies and disclosure controls and procedures.
- Aside from governance, the company should also pay attention to the "nuts and bolts" of its infrastructure, including:

  - having internal audit and regulatory/compliance teams and functions in place;
  - implementing appropriate management and reporting systems;
  - meeting build-out technology requirements; and
  - having a finance and accounting team that is capable of delivering accounts on time and accurately and meeting obligations under Sarbanes-Oxley.

Selecting an underwriter

One of the most important decisions that a company will make during the IPO process is to select an underwriter for the offering. When selecting banks, the company should consider the following criteria.

Experience/track record

Does the bank have sufficient experience in leading IPOs? What is the bank's track record in US IPOs and US IPOs from Chinese issuers? An experienced bank can help the company to identify and navigate potential hurdles throughout the process to ensure a smooth execution.

Reputation

What is the bank's reputation in the market? A top-tier bank can help to generate greater market attention for the IPO and provide further credibility to the company when marketing the transaction.

Investor access/distribution capabilities

Does the bank have access to the largest investors and/or the leading investors in the sector? How experienced is the sales team? How long has the sales team been at that particular investment bank? Is the sales team structured by geography, sector or product? A committed, experienced sales team is critical to ensuring that the company can tap all potential pools of demand for an IPO.

View on valuation

What is the bank's view on the potential valuation for the company? The company should assess the bank's understanding of its business, industry fundamentals and growth strategy to ensure that the bank can position the company appropriately in the market. In addition, the bank should be able to articulate the valuation approach and methodology the investing community will use in evaluating the target company.

A global platform

Does the bank have sufficient on-the-ground presence to lead day-to-day execution at the company site and truly understand local industry dynamics? Can the bank leverage global, best-in-class expertise? Given the cross-border nature of the US IPO process for a Chinese issuer and increasing global connectivity in the markets, it is important that the bank be able to deliver resources, connectivity and new ideas across regions.

Full-service capabilities

In addition to the IPO, can the bank capably advise the company on future equity and debt financings or M&A transactions? Will the bank be able to provide strategic, industry or regulatory advice to the company on future initiatives? The IPO will be the foundation for a long-lasting relationship with the bank. As such, it is important to select a bank that has expertise and capabilities across a broad spectrum of services.

Kicking off the IPO

Organizational meeting

The organizational meeting marks the formal start of the IPO process and is intended to bring all professional parties (ie, banks, lawyers and accountants) together to review the offering specifics, key roles and responsibilities, the timeline for the IPO and any preliminary issues.

The meeting is typically held at the company's headquarters. The underwriter will prepare a kick-off book, which contains offering details and key contacts for each of the working parties.

Due diligence

The first major phase of the IPO process is due diligence. The key objectives of this are to allow the company's advisors to develop a thorough and comprehensive understanding of the company and to assist it in ensuring that the offering documentation captures all material information for the IPO.

Due diligence is an ongoing process, during which all professional parties may:

- conduct site visits at the company and/or facilities;
- interview company management and officials;
- survey key customers and suppliers;

- conduct legal review of material customer and supplier contracts and documents such as board, shareholder and committee resolutions and minutes, licences and permits, litigation matters and employment contracts; and
- access the company's historical and projected financials.

Registration statement and SEC review process

Every company pursuing a US IPO must file a registration statement with the SEC. Assuming that the Chinese company is a foreign private issuer (as defined under the Securities Act's rules and regulations), it will file a registration statement on Form F-1. Foreign private issuers that are registering for the first time have the benefit of being able to submit registration statements on a confidential basis to the SEC until they choose to file the registration statement publicly.

The registration statement is a disclosure document which must contain all disclosures required by the SEC for the IPO, as well as all other material information about the company for investors to make an informed investment decision. The SEC review process is designed to ensure that the information contained in the registration statement is complete (containing all material information for disclosure) and written in clear and concise language. The company may not make any sales of securities until the registration statement is declared "effective" by the SEC.

Drafting process

Through the course of due diligence and additional information sessions with management, the underwriter and legal counsel will gather the relevant information required for the registration statement.

The company's counsel will typically take the lead role in drafting the company's disclosure for the registration statement in a series of "drafting sessions".

The underwriter and other professional parties will provide significant input for the disclosure, including in particular the underwriter's view on the company's strengths, strategies and the industry in which the company operates.

Generally, depending on the complexity of the company and its financial statements, it will take between six and eight weeks to complete the registration statement for the initial confidential submission of the registration statement to the SEC; however, depending on the state of the audit, it may take a significantly longer time.

The registration statement must contain the following sections and/or information:

- business – including:
  - a description of the company, including main products and services, business strengths and strategies, marketing strategies and customers, production process, research and development, facilities, employees;
  - industry overview and trends (which is sometimes a separate section or included within the business section);
  - offering overview; and
  - use of proceeds for the offering;
- financial statements – including:
  - audited financial statements for the last three financial years;
  - selected financials for the past five financial years;
  - interim financial information for the current year depending on the timing of the offering; and
  - if applicable, certain *pro forma* financial statements, for example in connection with recent mergers or acquisitions that meet certain thresholds;
- management discussion and analysis of financial condition, and results of operations – including:
  - year-on-year comparison of actual performance for the past three years and interim financials;
  - current and anticipated future business trends;
  - success or failure of certain operations;
  - capital and expenditure needs;
  - expected sources of funding; and
  - any other trends that are relevant or material to the business;
- management and governance of the company – including:
  - an overview of the board of directors;
  - board committee structures;
  - compensation disclosure for company executives (which may be significantly streamlined for foreign private issuers); and
  - stock ownership and any beneficial interests of the company executives and board members;
- risk factors; and
- others – including:
  - corporate structure;
  - related party transactions;
  - capital structure;
  - principal shareholders; and
  - regulation.

SEC review process

After the registration statement has been drafted, the company will make an initial confidential submission of the registration statement to the SEC to begin the review

process. For a foreign private issuer, the registration statement will not become public until the company decides to file it publicly – typically after all material SEC comments have been resolved, at which point it will be filed publicly and become accessible by the public.

The SEC review process is primarily focused on making sure that required disclosures are included and written in clear and concise language, in particular with respect to the business and financial disclosure. In addition, the SEC may focus on "cheap stock" issues and examine whether the company has appropriately valued the shares issued to employees and other pre-IPO shareholders, such as venture capital firms and financial sponsors. After the initial confidential submission of the registration statement, the SEC will typically take approximately 30 days to review the document before providing comments and suggested revisions in the form of a letter.

The company and its advisors will review the comments, amend the registration statement accordingly and submit a response letter setting forth the company's responses to the SEC's comments and amended registration statement to the SEC. Typically, there will be several rounds of confidential submissions and comments from the SEC, depending on the complexity of the company and its financial statements.

Once the company and its advisors are confident that there will be no further major comments from the SEC, the company may file the registration statement publicly, print a preliminary prospectus (or "red herring") including a price range, and begin the marketing phase of the IPO.

Generally, the SEC review process will take between eight and 12 weeks from the time of the initial confidential submission to public filing, but can take longer depending on the company.

Structuring the IPO

Throughout the documentation preparation and SEC review process, the company should begin working with the investment bank to structure the IPO appropriately for a positive market reception.

Optimizing the size of the offering

In determining the right size for the offering, the company should be guided by both the use of proceeds for the offering and the desire for liquidity from existing investors.

Also, the company should consider what the size of the offering should be within the broader market context. What is the total size of expected demand in the market environment? Will the IPO size ensure adequate aftermarket trading liquidity in the stock? The investment bank will play a critical role in helping to guide the company through these questions.

The right primary/secondary mix

In the IPO, it is important that the company issue sufficient primary or new shares to raise capital that can help it execute its business strategy. How much capital will the company need to fund continued growth in the business? Does the company have the right public market capital structure or will it need to raise additional equity to achieve deleveraging?

Depending on the liquidity objectives of pre-IPO shareholders, the company may also include secondary shares in the IPO. In fact, secondary shares can often be helpful, to the extent that the required primary component does not establish the appropriate aggregate deal size.

When including secondary shares in an offering, the company should consider the impact on the equity story and message to the investing community. Given the significant capital needs of growth businesses in China, US IPOs from China have historically comprised mostly primary shares, with secondary shares accounting for between 10% and 20% of the total offering size. However, in many instances secondary shares can often account for a larger portion of the IPO, or none at all.

IPO lock-up requirements

To mitigate investor concerns about additional supply of stock coming to market shortly after the IPO, the company and its directors and officers and shareholders must commit to a lock-up which will restrict sales of stock for the near term. Typical US IPO lock-up provisions usually last for 180 days.

Countdown to launch: marketing strategy

As the company nears completion of the documentation process, it should also turn its attention to the marketing aspects of the IPO. In doing so, the company and its advisors will focus on crafting a tight, convincing "story" for the business to present to the market and finalize preparations for the offering launch.

Developing the equity story

The equity story will form the backbone of the marketing strategy for the IPO. It will drive how the company is positioned in the market, and which comparables investors reference in evaluating the company, and will ideally create a "must-own" sentiment around the IPO. A successful equity story

will:
- define market opportunities and challenges;
- highlight competitive advantages and risks;
- communicate goals for the growth of the business;
- explain the company's financial model; and
- anticipate and address investor concerns.

Educating the sales force

Immediately after the public filing and launch of the IPO, the bank will perform a comprehensive education effort on its sales force to ensure that is well prepared to engage investors and generate demand for the offering.

The bank will publish an internal marketing document or "sales memo," which outlines the company story, industry dynamics, recent financials and key talking points for the offering.

Typically, the investment bank's equity research analyst will hold an internal "sales call" at the time of the offering launch to discuss views on the company and the sector.

The investment bank will also hold a sales force "teach-in" with participation from company management. This will provide an opportunity for the sales force to meet the management team, go through the roadshow presentation and participate in a question and answer session.

Setting the price range for the IPO

Finally, the investment bank will conduct an initial valuation analysis to determine the appropriate price range to be filed and used for the offering.

The goal in setting the price range is to encourage investors to consider the IPO and generate broad interest to help build demand tension.

In setting the price range, the investment bank and issuer will need to capture the optimal price for the IPO, but also give consideration to positive aftermarket trading.

It is possible to price above or below the price range, but if the final price is significantly outside the range, the issuer may need to file an amended registration statement, which could potentially delay the IPO.

On the road: investor roadshow and marketing

Once the working group has determined that no material SEC comments are outstanding and market conditions allow, the registration statement is filed publicly and a preliminary prospectus or red herring (which forms a part of the registration statement) is printed and distributed to investors globally. The red herring contains all material information for investors to evaluate the company and serves as a key document for investors to reference throughout the marketing of the transaction.

The public filing of the registration statement, including printing of the red herring, marks the formal start of the IPO's marketing phase. This phase has two key objectives: to disseminate the company's equity story and investment thesis to the market, and to generate investor demand for the IPO.

Global investor roadshow

The investor roadshow is a critical component of the marketing phase where company management has the opportunity to meet directly with investors. Typically, the roadshow lasts between eight and 10 business days, covering major cities across Asia, Europe and the United States.

The roadshow will consist largely of one-on-one meetings with investors. There will also be small group presentations, as well as larger investor luncheon presentations in key cities such as Hong Kong and New York. Throughout the meetings and presentations, the management team will use a "roadshow presentation," which is a company-generated presentation that includes information regarding the company and the offering.

The roadshow team typically includes between two and four members of the senior management team (eg, the CEO, CFO and chief operating officer).

Throughout the roadshow, the investment bank will:

- coordinate logistics to allow management access to investors (and vice versa);
- educate the company on each investor's profile and investment style;
- accompany the roadshow team to meetings to introduce the offering to investors; and
- deliver end-of-day updates with analysis of the market environment and investor feedback from meetings.

Book-building process

While the company is running its roadshow, the sales force from the bank and other syndicate members will begin soliciting orders from investors, which is known as the book-building process. These orders will indicate:

- the identity of the investors;
- the desired number of shares; and
- price sensitivity (ie, maximum price, if

any).

As the bank gathers feedback from the market and continues to build the book of investor demand, the company will be updated periodically throughout the roadshow regarding the current state of the order book, including price sensitivity, investor sentiment and broader market environment.

Pricing, allocation and trading

Based on the orders and investor feedback received throughout the book-building process, the bank and the issuer must determine the final offering price for the IPO. Pricing for the IPO will occur after market close on the final day of the roadshow at a "pricing meeting" between the investment bank, company management and selected board members.

When pricing, the objective should be not simply to maximize the price for the IPO, but to determine the highest market-clearing price which will establish a positive trading dynamic and create long-term value for the company.

Once the offering price has been determined, the company management and investment bank will allocate shares for the IPO, which is the process of deciding how many shares each investor will receive.

The day immediately after pricing marks the first day of trading, where the company's shares will begin trading on the NASDAQ exchange in the morning after market open. The company will receive the proceeds from the IPO on settlement day (typically four business days after the pricing date), which will also mark the completion of the IPO process.

Beyond the IPO: what the investment bank can offer

In the immediate period after the IPO, the company should aim to produce consistent business and financial performance – with particular emphasis on the first quarter after the offering. If the company can deliver on the business and financial performance, the stock price will naturally follow.

Key areas of focus for newly listed companies should include the following:

- Manage investor and Wall Street expectations through:
  - careful guidance and discussion with analysts – it is always better to "under-promise and over-deliver";
  - focusing on producing consistent results and avoiding surprises; and
  - building and maintaining credibility with the market – it is critically important to meet the first few quarters' earnings estimates.
- Increase scrutiny and disclosure requirements by outside constituents such as the SEC, investors, research analysts, auditors and Sarbanes-Oxley requirements.
- Expand corporate/public company functions, through:
  - investor and press relations – as a listed entity, the company should ensure that it can communicate capably with the market, including research analysts and investors based in the United States;
  - the board of directors; and
  - financial reporting and internal audits;

The investment bank can play a critical role in assisting the company in all of these important initiatives. In fact, the IPO is often only the beginning of a long-term relationship with an investment bank, which can provide a wide spectrum of services to the company post-IPO, including:

- intelligence on the markets, such as market updates covering market drivers, trading flows, and investor feedback on the stock, and shareholder tracking to analyze key shareholder movements and identify potential sources of demand for further equity offerings/sell-downs;
- investor relations, including:
  - non-deal roadshows to promote the equity story further and broaden the company's profile among investors and research analysts;
  - assistance in preparing presentations, communications and other financial announcements to craft the equity story and position new business developments appropriately in the market; and
  - contacts and access to top shareholders in the company and other leading investors globally; and
- strategic advice, including:
  - advice on M&A opportunities;
  - recommendations on future financing strategies; and
  - sector and industry expertise.

For the investment bank, the IPO will be just one milestone among the many financial and strategic goals it can help the company achieve throughout its life as a publicly listed entity.

Founded in 1869, Goldman Sachs provides a wide range of services to a substantial, diversified and global client base that includes well known corporations, financial institutions, governments and high-net-worth individuals.

By bringing together people, capital and ideas, we produce solutions and results for our clients by playing a number of roles: financial advisor, lender, investor and asset manager. We understand that by serving our clients well and creating opportunities for economic growth, our own success will follow.

Goldman Sachs

goldmansachs.com

3

The role of depositary receipts

Valentina Chuang, Depositary Receipt Services, Citi

A depositary receipt (DR) program is an effective option for non-US companies seeking to undertake global equity offerings. DRs have long been a popular instrument in worldwide capital markets, particularly where the elimination of custody and cross-border safe-keeping charges are a key concern.

The role of the depositary bank

A DR program is an effective option for non-US companies seeking to undertake global equity offerings. Issuers establishing DR programs may benefit from a broadened investor base, potentially increasing liquidity as a result of an expanded market, and enhanced visibility. From the investor perspective, DRs have long been a popular instrument in worldwide capital markets, particularly where the elimination of custody and cross-border safe-keeping charges are a key concern.

DRs were created in 1927 to assist US investors seeking to purchase shares of non-US corporations. Since then, DRs have grown into widely accepted, flexible instruments that provide issuers worldwide with access to investors outside their home markets. Historical and recent data points to the growing size of this opportunity. According to the US Federal Reserve, total US investment in non-US equities including DRs and non-US shares has increased steadily over the last 19 years, rising from $279 billion in 1991 to $4.4 trillion in 2010. Additionally, overall DR trading volumes increased to 147.4 billion shares in 2010, growing at a compound annual growth rate of 19% since 2006, reinforcing the long-term trend of constant growth in cross-border trading. Specifically, capital raised in the form of DRs by non-US companies reached $20.7 billion in 2010, a 26% increase over 2009.

Roles and relationships for the issuer and the depositary

In order to establish any type of DR program, the issuers assemble a team of advisors that typically includes investment bankers, lawyers and accountants. The issuer also selects a depositary bank, a key partner that enlists the services of a local market custodian to assist in the implementation of the program.

Once the issuer and its advisors have evaluated the company's unique needs, and have determined the type of DR program best suited to its objectives, the issuer and the depositary execute a deposit agreement, a contract which sets forth the terms of the DR program. Based upon the contract, the depositary performs certain specific services on behalf of the issuer and the DR holders. Many of these same parties may play key roles in the long-term development and day-to-day management of the issuer's DR program. However, the depositary bank will remain a critical liaison between the issuer and brokers and investors, while the functions of lawyers and accountants become focused on periodic reporting. Typically, investment bankers are not involved with the DR program unless the issuer is going back to the market.

TABLE 1

Roles in the establishment of a DR program

Role of depositary	Role of issuer
Consult on DR facility structure.	Determine corporate and financial objectives.
Appoint custodian.	Appoint depositary, legal counsel, investment bank and accountants.
Assist with DR requirements.	Determine program type.
Coordinate with lawyers and investment bankers to ensure that all the implementation steps are in place.	Obtain approval from board of directors, shareholders and regulators as needed.
Prepare and issue DRs.	Provide financial information to accountants and advisors.
Announce program establishment to investor community.	Develop and investor relations plan.

How to evaluate a depositary bank

The depositary bank plays a critical role for issuers that wish to expand their access to capital, broaden their investor base globally, and take advantage of all the benefits of DRs. The issuer and the depositary bank enter into a relationship that extends through the offering process and implementation stages and continues through the ongoing management of the DR program.

As a guideline for evaluating depositary banks, the issuer should consider the resources and track record of the provider, as well as its core competencies and value-added services.

Key questions to ask a depositary bank

Key questions include the following:

- How extensive is the depositary bank's expertise in securities processing?
- Can the depositary bank offer your company a complete range of banking and financial products?
- How is the depositary positioned with investors and other global market participants?
- What peers in your region and worldwide exemplify how the depositary has managed liquid DR programs?
- How many years of experience does the organization have in serving DR issuers in your region?
- What awards has the depositary bank won that represent a third-party endorsement of its superiority over its competitors?

The depositary's commitment to investor relations

The breadth of value-added services offered by a depositary can enhance a company's internal investor relations (IR) effort and should be a crucial consideration for the issuer in selecting a depositary services provider. Citi pioneered the depositary's role of IR counsel, delivering the expertise and resources required for its sponsored issuers to achieve their international IR goals.

For example, where appropriate, a depositary's IR counsel may work closely with the issuer in formulating investor strategic plans and identifying, targeting and accessing new investors. IR counsel may also advise the issuer on financial media relations, non-deal road shows, IR website development and the selection of outside IR firms. The depositary may also provide shareholder intelligence tools, delivering comprehensive share ownership and peer ownership data and analytical flexibility.

TABLE 2 **Roles in the ongoing development of a DR program**

Role of depositary	Role of issuer
Issue and cancel DRs.	Provide required certificates to the DR bank and the issuance of DRs, if needed.
Serve as registrar and transfer agent for the DRs	Communicate with depositary regarding the DR program including potential program changes.
Act as paying agent, processing dividend payments or other entitlements for DR holders.	Pay dividends to local custodian for transfer to the DR holders.
Process corporate actions.	Communicate with depositary on corporate actions.
Provide ongoing account management support to the issuer.	Ongoing regulatory reporting and filing.
Coordinate proxy process for DR holders.	Communicate with depositary for shareholder services.
Offer value-added services such as investor relations counsel.	Develop investor relations plan.

Features and benefits of depositary receipts

A DR is a negotiable instrument issued by a US depositary bank evidencing ownership of shares in a non-US corporation. Each DR denotes depositary shares (DSs),

representing a specific number of underlying shares on deposit with a custodian in the issuer's home market. The term "DR" is commonly used to mean both the physical certificate and the security itself.

DRs are generally subject to the trading and settlement procedures of the market in which they trade. The different types of DR are frequently identified by the markets in which they are available, or the rules and regulations associated with the structures. For example:

- American depositary receipts (ADRs) are DRs that are publicly available to investors in the United States; and
- Global depositary receipts (GDRs) are DRs that may be offered to investors in two or more markets outside the issuer's home country, usually pursuant to Rule 144A and Regulation S (Reg S) under the US Securities Act of 1933.

DRs can be publicly offered, privately placed or issued pursuant to an international offering. The structure of the DR program typically defines the segment of investors that can purchase the securities. In the United States, publicly offered securities are available to the broadest spectrum of investors and trade either on a national stock exchange (eg, NASDAQ or the New York Stock Exchange (NYSE)) or in the over-the-counter (OTC) market. GDRs are usually offered to institutional investors through a private offering, in reliance on exemptions from registration under the US Securities Act of 1933. These exemptions are Reg S for non-US investors and Rule 144A for US investors that are Qualified Institutional Buyers (QIBs). QIBs in the United States include institutions that own and invest at least $100 million in securities of non-affiliates and registered broker-dealers that own or invest on a discretionary basis at least $10 million in securities of non-affiliates. A GDR offering often has a Rule 144A component as well as a placement to non-US investors pursuant to Reg S.

Benefits of a DR program specific to issuers and investors are highlighted in Table 3.

DRs can play a critical role in other types of cross-border transaction, such as privatizations and mergers and acquisitions.

Privatizations

The privatization of state-owned assets is an important undertaking for governments worldwide, as countries seek to restructure their economies and reduce fiscal deficits. Infrastructure and service enterprises such as telecommunications, utilities, airlines and petrochemicals are among those commonly targeted for privatization.

DRs have been used successfully by governments seeking to privatize state-owned enterprises. Privatizations require a successful offering of securities to investors, and DRs provide an effective mechanism

TABLE 3 Benefits of a DR program

DRs enable issuers to:	DRs aid investors by:
Access capital outside the issuer's home market.	Facilitating diversification into non-US securities.
Build company visibility in the United States and/or internationally.	Trading, clearing, and settling in accordance with the practices of the investor's home market.
Broaden and diversify their shareholder base.	Eliminating cross-border custody safe-keeping charges.
Increase opportunities to increase local share prices as a result of global demand/trading.	Enhancing accessibility of research, and of price and trading information.
Enlarge the market for the company's shares, potentially increasing liquidity.	Allowing easy comparison to securities of similar companies trading in the investor's home market.
Adjust share price levels to those of peers through a DR ratio.	Permitting dividend payments in US dollars and corporate action processing.
Utilize DRs to facilitate M&A activity through use as acquisition currency.	Enabling uniform proxy and corporate action processing.
Develop stock option plans and stock purchase plans for employees outside the issuer's home market.	Providing oppurtunities to move between markets.

both to increase private ownership and to raise capital overseas.

M&A

DRs can enhance the ease of trading and settlement related to cross-border mergers and acquisitions; they also can facilitate the execution of corporate actions such as payments of dividends, structuring of rights offerings and solicitation of votes. DRs enable issuers to address investor demands without the need to build an independent US shareholder support infrastructure, or to modify the equity issuance and trading patterns of the home market. Types of M&A transaction that have made successful use of DRs include:

- spin-offs of non-US subsidiaries;
- equity-based acquisitions of US business entities; and
- equity-based acquisitions of non-US business entities.

Program alternatives

Issuers structure a DR program based on their particular objectives. An issuer's aims in selecting the best DR alternative may include:

- expanding its shareholder base;
- gaining international recognition for the company name and for its products and services;
- using DRs as a capital-raising tool; and
- providing a convenient investment vehicle for its international employees.

Setting the ratio

A primary step in establishing a DR program is to determine the ratio of underlying shares to DSs. The share-to-DS ratio is established as a multiple or fraction of the underlying shares and this ratio can influence the price-trading range. In setting the ratio, the issuer should consider:

- industry peers – securities of companies in the issuer's industry generally trade in a certain price range and the issuer may want to conform to industry norms in the market where the DR will be listed;
- exchange options – each exchange has average price ranges for the shares listed and, generally speaking, issuers may want to conform to that range; and
- investor appeal – US institutional and retail investors are more likely to buy shares that they perceive to be well priced and valued fairly.

While many DR programs are established with a 1:1 ratio (one underlying share equals one DS), DR programs have been known to have ratios ranging from 100,000: 1 to 1:100. The depositary will work with issuers to determine the most appropriate ratio at the inception of the DR program. In addition, the ratio can be adjusted at a future date, for example, to address changes in market conditions.

Types of DR program

In the United States, DRs can be:

- traded over the counter through Pink Sheets or OCTQX (Level I);
- listed on a US exchange such as the NASDAQ Stock Market or the NYSE (Level II);
- issued as a public offering of securities on a US exchange (Level III);
- placed with QIBs in the Rule 144A market; and
- placed outside the United States with non-US persons in accordance with the US Securities Act (Reg S) – note that Reg S programs are often offered in global markets in conjunction with 144A programs in the US market.

Program alternatives

US-listed DR programs

Listing on one of the US national exchanges can promote comparatively active trading in ADRs versus a Level I and increase the issuer's visibility within the United States, as listed ADRs typically receive wider research coverage by US analysts and the financial media, hence providing investors with increased information about the issuer and its securities.

TABLE 4 **DR program alternatives to broaden shareholder base with existing shares**

	OTC Level I	Exchange-traded Level II
Description	Unlisted program in the United States.	Listed program on a recognized US exchange.
Trading	Quoted in the Pink Sheets and/or on the OTCQX.	NYSE or NASDAQ.

Issuers can also use ADRs to access institutional investors that may be prohibited or limited by their respective charters, or by regulation, from investing in non-US securities purchased in the issuer's home market. US investors may prefer to purchase ADRs rather than shares in the issuer's home market as the DR securities trade, clear and settle according to US market conventions.

To list its ADRs in the United States, the issuer must comply with the requirements of the relevant stock exchange. The issuer must register under the Securities Act and the Securities Exchange Act of 1934 and file an initial registration statement and periodic financial reports. Non-US issuers that are listing their securities must reconcile all financial statements to US generally accepted accounting principles (US GAAP) or international financial reporting standards (IFRS), as published by the International Accounting Standards Board. Financial reporting for individual business segments need not be reconciled to US GAAP or IFRS. Listing securities exempts non-US issuers from complying with various state securities regulations.

In a Level III program, the issuer offers new shares to US investors in ADR form. A public offering provides the issuer with the ability to raise capital by accessing the broadest US investor base. In order to conduct an initial public offering (IPO) in the United States, the issuer must:

- submit Form F-1 to the Securities and Exchange Commission (SEC) to register the underlying securities to be offered;
- fully reconcile its financial statements to US GAAP or IFRS (or include US GAAP financials); and
- submit Form F-6 to the SEC to register the ADRs with the depositary.

In establishing a Level III ADR program, the issuer also selects an investment bank to advise on and underwrite the offering and to market the ADRs to US investors. Once the offering has been completed, the program is maintained as a listed facility and can typically accept ongoing deposits from investors. An issuer may also raise capital in subsequent offerings. In such a follow-on offering, the issuer may file a Form F-2 or Form F-3 with the SEC.

Rule 144A DRs

Rule 144A DRs are DRs that are privately placed in the United States. These DRs are traded pursuant to Rule 144A which, adopted in 1990, greatly increased the liquidity of privately placed securities by allowing QIBs to resell those securities privately to other QIBs without a holding requirement or other formalities.

GDRs

GDRs allow an issuer to raise capital through a global offering. Global offerings allow issuers to access shareholders in capital markets outside the issuer's home market. GDRs use a global settlement convention which may include the DepositaryTrust Company, Euroclear and Clearstream to provide global clearing and settlement, ultimately promoting increased liquidity through cross-border trading.

GDRs can be issued in either the public or private market. Most GDRs include a US tranche, which can be privately placed under Rule 144A, and an international tranche placed pursuant to Regulation S outside the United States – typically in the Euromarkets. GDRs placed in Europe are often listed on the Luxembourg or London Exchanges.

Several additional listing destinations have become viable, potentially expanding the opportunities for DR issuers. These

TABLE 5

DR program alternatives to raise capital with new shares

	Public offering Level III	Rule 144A DR	GDR
Description	Offered and listed on a recognized US exchange.	Private placement in the United States to QIBs.	Global placement outside the issuer's home market; this may include a 144A DR and/or Reg S offering.
Trading	NYSE or NASDAQ.	QIB Market networks in the United States.	London Stock Exchange, Luxembourg Stock Exchange or others.

include the Singapore Exchange Limited and the Dubai International Financial Exchange.

The evolution of regionally specific DRs is evidence of the flexibility of the GDR, allowing issuers to select the investor base they wish to access and broaden their shareholder base into new markets. For example, an issuer could establish a GDR program that targets European, Asian and/or Latin American investors and does not offer shares in the United States. Over time, the GDR program could be enhanced to reach additional markets and investors.

Upgrading a GDR to a publicly listed program

A non-US company may decide to list its DRs subsequent to its global Rule 144A and Regulation S offering. Upgrading from a GDR to a US-listed ADR program is a viable option for companies wishing to achieve greater global reach and visibility. Although the Regulation S tranche easily may be moved to a listed facility 40 days after the Regulation S offer, generally a Rule 144A tranche is slightly more challenging. A Rule 144A facility cannot actively coexist with a US-listed program. In order to upgrade the Rule 144A facility to a listed program, the issuer will typically first need to file a Form F-4 registration statement pursuant to the Securities Act. After the F-4 registration statement has been filed, a registered exchange offer with the QIBs may be undertaken. Under certain circumstances, and if the Rule 144A program is "seasoned," the issuer may opt for a private exchange using a certification process rather than a registered exchange under the Securities Act.

Issuance and cancellation of DRs

Based upon availability and market conditions, an investor may acquire a DR either by purchasing existing DRs or by converting shares purchased in the issuer's home market to DRs. New DRs are issued subsequent to the deposit by an investor or broker of shares with the depositary's local market custodian. The depositary then issues DRs, which represent the shares on deposit, to the investor or broker. This is referred to as an issuance of DRs.

Conversely, an investor may cancel the DRs and sell the underlying ordinary shares in the relevant home market upon delivery of the DRs and of cancellation instructions to the depositary, which in turn cancels the DRs and notifies its custodian to release the underlying shares according to the investor's instructions. The broker may then either safe keep or sell the ordinary shares in the local market.

Liquidity

For many DR market participants, liquidity – the consistent breadth and depth of trading activity – is considered the best measure for long-term success of a DR program. Without the ability to move into and out of positions of sufficient size, institutions are often reluctant to add the security to their managed portfolios. Likewise, brokers prefer to deal in liquid issues, and both sell-side and buy-side analysts prefer to cover liquid securities with high standards of financial disclosure providing an important added protection. Once established liquidity can be facilitated and maintained through a strong investor IR effort and the resources of the depositary bank and other partners.

The findings of Citi's "The Liquidity Premium" study (published in 2007 by the Rutgers University School of Law Business Law Journal) built upon academic research showing that firms cross-listed on a US exchange, such as the NYSE or NASDAQ, benefit from, on average, a sustainable valuation premium of 33% over companies that do not cross-list. The Citi study demonstrated that, on average, companies with liquid DRs, whether cross-listed or direct listed, had higher valuations, as measured by their price-to-book-value ratios, than those with fewer liquid DRs.

Limited two-way market

Some countries maintain restrictions on the re-issuance of DRs. In this limited two-way market environment, after withdrawal and sale of ordinary shares from the DR facility, the shares are subject to limitations on redeposit into the DR facility. Deposits may, for example, occur only up to a certain limit. Once that limit has been reached, the DR facility may be closed for re-issuance pending receipt or required permissions. In contrast, most countries have an unlimited or free two-way market, where foreign investors may purchase at any time, outstanding ordinary shares in the local market for deposit into the DR facility.

Relaxed restrictions may benefit issuers through:

- increased possibility for immediate issuance of DRs;
- enhanced liquidity over time – the ability to issue and cancel the company's DRs potentially enhances trading activity. The associated advantages are higher investor demand and higher valuation;
- decreased risk resulting from lower share price volatility – due to larger pool of a company's stock, changes in supply and

demand yield smaller price changes; and
- broadened opportunity for non-US investment in the local market.

A DR premium is the differential between the ordinary share price in the local currency and the price of the DR. Historically, when the US market outperforms the non-US market, the premium grows. When the local market outperforms the US market, the premium typically shrinks. The limited two-way market promotes cross-border liquidity up to a point; however, it may not significantly reduce the size of the DR premium as compared to an unlimited and two-way market.

US securities regulations and DRs

Issuers of DRs must comply with the regulations of the markets in which their DRs are issued. In the United States, the SEC was created as an independent agency of the US government to enforce federal securities laws governing securities offerings, trading practices and persons dealing in the securities markets. The SEC protects US investors and US markets by requiring disclosure of material facts concerning issuers making public offerings of securities. The SEC is empowered to issue regulations and enforce provisions of both federal securities laws and its own regulations.

Two key US securities laws with which DR issuers must comply are the:

- Securities Act of 1933; and
- Securities Exchange Act of 1934.

The primary intention of the Securities Act is to provide investors with full and fair disclosure of material information regarding an issuer in connection with the offer and sale of its securities. The Securities Exchange Act is different in that its primary intention is to provide investors trading securities in the secondary market with access to full and fair disclosure of material information about an issuer on an ongoing basis.

With the arrival of the more stringent regulatory climate in the United States, some DR issuers initially felt a need to reassess the costs compared to the benefits of their US listings. Many did not see the US regulatory climate as an obstacle, given that most countries have tightened their compliance rules in recent years. In fact, many equities markets outside the United States are known to have equally strict, and perhaps even stricter, corporate governance requirements. Some IR experts argue that more stringent standards represent an opportunity for companies to differentiate themselves. When investors calculate the risk/reward equation, there is a greater "comfort factor" with companies known to have cleared certain regulatory hurdles.

The SEC noted issuer concerns regarding some of the burdens caused by recent corporate governance legislation. For example, the SEC has applied and is continuing to evaluate certain exemptions for non-US companies from provisions of the Sarbanes-Oxley Act. In addition, a series of reforms came into effect in December 2005 impacting the securities offering process in the United States. These measures are expected to simplify access to the US capital markets for both US and non-US companies, including those issuing DRs.

Conclusion

DRs are a winning proposition for global financial markets, benefiting non-US issuers and international investors alike. For issuers, a DR program can serve to broaden and diversify a company's shareholder base, enlarging the market for its shares and potentially increasing liquidity. DRs are attractive to investors worldwide who are looking to eliminate cross-border custody safe-keeping charges and enhance the accessibility of research and price and trading information.

The depositary is a key partner for the issuer, both in establishing a DR program and in developing and managing the program on an ongoing basis. The role of the depositary in a UK program establishment includes advising on DR facility structure, and coordinating with lawyers and investment bankers to ensure that all implementation steps are completed. On an ongoing basis, the critical role of the depositary includes issuing DRs and providing ongoing account management and IR support to the issuer.

A crucial consideration for the issuer in selecting its depositary is the depositary's experience and a program of value-added services, which should be designed to complement the company's IR effort.

Citi's ADR programs for Chinese companies

Citi's Depositary Receipt Services is the market leader in China, which is reflected in the largest number of new listing mandates won in recent years on the back of its service quality and dedicated team on the ground. In 2010, approximately $5.3 billion in capital (for both IPOs and follow-on offerings) was raised in China in DR form. Citi led the way in DR IPOs, raising more than $1.9 billion in DR form – capturing 47% of the IPO market share in China. Its team in Asia provides dedicated services to issuers before their offering listing, as well as ongoing support after their listing. This includes its IR services, which comprise training and a range of visibility programs that help issuers enhance communication with relevant investor groups in the United States.

Citi's Depositary Receipt Services business has been recognized by *The Asset* magazine for seven consecutive years. Most recently, Citi was named best ADR bank in 2011 and best GDR bank in 2010 by the magazine.

About Citi's Depositary Receipt Services

Depositary Receipt Services, a business within Citi Global Transaction Services, is a leader in bringing quality issuers to US and global capital markets, and in promoting DRs as an effective capital markets tool. Citi began offering DRs in 1928 and today is widely recognized for providing non-US companies with access to the powerful global platform Citi has to offer. For information about DRs visit www.citi.com/adr.

About Citi

Citi, the leading global financial services company, has approximately 200 million customer accounts and does business in more than 160 countries and jurisdictions. Citi provides consumers, corporations, governments and institutions with a broad range of financial products and services, including consumer banking and credit, corporate and investment banking, securities brokerage, transaction services, and wealth management. Additional information may be found at www.citigroup.com | Twitter: @Citi | YouTube: www.youtube.com/citi | Blog: http://new.citi.com | Facebook: www.facebook.com/citi | LinkedIn: www.linkedin.com/company/citi.

About Citi's Global Transaction Services

Global Transaction Services, a division of Citi's Institutional Clients Group, offers integrated cash management, trade, and securities and fund services to multinational corporations, financial institutions and public sector organizations around the world. With a network that spans more than 100 countries, Citi's Global Transaction Services supports more than 65,000 clients. As of the fourth quarter of 2010, it held $353 billion in liability balances, up 4% sequentially, and assets under custody grew 2% to $12.6 trillion.

Global Transaction Services
www.transactionservices.citigroup.com

When competing for global investors, success can depend on accessing the broadest range of resources to support the growth and management of your depositary receipt activities.

With Citi's global reach, local expertise and end-to-end coverage — from our unmatched proprietary distribution network to our in-house Investor Relations Counsel — we can help optimize the efficient execution of your capital market transactions.

Because markets are on the move, that's why Citi never sleeps.

Please visit us at www.citi.com/adr.

Citi never sleeps®

citi®

4

The role of the accountants

Laura Butler, Min Xiao and Yulanda Tang, PricewaterhouseCoopers

Accountants qualified to practice before the US Securities and Exchange Commission are indispensible for companies about to embark on a public offering of securities in the United States. Beyond basic financial statement audits, an independent registered accountant can also assist in the underwriters' due diligence process and offer insights as to how the management can augment its existing process and controls for life as a public company.

Accountants qualified to practice before the SEC are indispensible advisors that a company will need in connection with a public offering of securities in the United States, which is often part of a broader global offering (together, an initial public offering (IPO)). The company's financial statements must be audited by an independent registered accountant. Beyond the basic financial statement audits, an independent registered accountant also assists in the underwriters' due diligence process, given the perspectives and knowledge its responsibilities afford, and can provide insights on how management can augment its existing process and controls for life as a public company. A growing number of companies preparing for an IPO have also engaged a second accounting firm to provide non-audit advisory services. In this regard, a second accounting firm, which is not required to be independent of the company, can provide the additional resources required to meet the increasingly demanding expectations of investors for more relevant and timely information in financial statements and offering documents.

Many companies contemplating an IPO have found that they lack the experience and expertise to prepare the required financial information effectively or to establish the flexibility needed to execute successfully against what are often evolving and sometimes uncertain market conditions. As preparation of the financial information is one of the most critical workstreams in an IPO process, it is important to have auditors and accounting advisors which:

- possess extensive experience, demonstrated through a proven track record in successfully working with companies through the IPO process;
- specialize in providing practical advice and assistance on technical accounting matters and compliance with SEC rules in a non-US environment;
- maintain dedicated resources in the region or country to ensure an understanding of local business practices and reduce execution risk; and
- stand ready to provide timely services as market opportunities emerge.

As the accounting profession expands in emerging markets, identifying the most suitable US generally accepted accounting principles (GAAP) and IPO specialists can pose a challenge. It is important to evaluate carefully the qualifications and experience of potential auditors and accounting advisors in order to ensure the right selection. The accounting profession is growing rapidly in China and Hong Kong, but the growth in the number of qualified individual accountants with years of experience working on IPO transactions is constrained. While not always the cheapest alternative, as the most qualified resources are usually in high demand, the selection of the right accountants will improve a company's ability to meet the demands of the IPO process effectively and reduce execution risk. It can also help the company to avoid delays, which could potentially result in millions of dollars of lost proceeds.

This chapter outlines the initial and ongoing financial reporting requirements for non-US companies registering securities with the SEC and the accountant's role before, during and after the offering process.

US accounting and reporting framework

The US securities markets represent the largest source of capital in the world and present many opportunities to Chinese and Hong Kong companies seeking to raise capital and increase their global profile. However, because of the extensive information and compliance standards required by the US regulatory environment, companies seeking to list on NASDAQ must prepare themselves for the technical challenges of:

- demonstrating their ability to manage their operations and financial health;
- establishing and maintaining effective corporate governance and internal controls; and
- increasing their reporting transparency.

The principal regulator of the US capital markets is the SEC. Based in Washington DC, it is tasked with ensuring a fair and level playing field for publicly listed companies and their investors. Before a company can sell securities to the public in the United States, it must first submit a registration statement to the SEC, which includes information that adequately informs potential investors about the company. Among other things, the company's management must prepare financial information of the company according to SEC rules, which is then audited by the company's independent registered public accountant.

Chinese and Hong Kong companies seeking to list in the US markets must educate their management and employees about the accounting and reporting framework regulated by the SEC.

As has been widely reported, the bodies responsible for promulgating International

Financial Reporting Standards (IFRS) and US GAAP have agreed to converge the two sets of standards over the coming years, with the explicit support of the SEC for the development of a single set of high-quality global accounting standards, which will require changes to both sets of existing guidance. In addition, one byproduct of the rapidly evolving global economy is more complex business transactions, many of which are the subject of new (and often equally complex) accounting guidance and authoritative interpretations. This is true even under a principles-based framework such as IFRS.

The Financial Accounting Standard Board (FASB) and the International Accounting Standards Board (IASB) have been working together to converge both standards. Progress is being made on several projects, including revenue recognition, leases and financial instruments. It is difficult to say that the two standards will be totally converged, but the recent actions give hope that the differences in the standards will be limited.

The SEC is expected to make a determination in 2011 as to whether to incorporate further IFRS into the US public markets. If the SEC decides to incorporate IFRS into the US reporting system, it will likely allow an extended transition period (eg, a minimum of four years) for companies to implement the new framework. A decision by the SEC to expand the use of IFRS in the US reporting system will significantly affect public companies and require significant advanced planning and investment.

Companies entering the US capital markets must also comply with Section 404 of the Sarbanes-Oxley Act of 2002. One of the major challenges facing newly US-listed companies will be to ensure that the company's internal controls meet the requirements of the various regulations. This requires the company's chief executive officer and chief financial officer to provide, when submitting financial information to the SEC, certain certifications regarding the company's financial statements and the effectiveness of the company's disclosure controls and procedures (Section 302 certifications). In addition, in its second annual report after it becomes an SEC registrant, the company must provide management's assessment as to the effectiveness of the company's internal controls over financial reporting, and the company's independent accountants must issue an attestation report on its internal control over financial reporting.

Accounting and reporting requirements of a US public offering

Registration statement

Form F-1 is the form on which most foreign private issuers file their registration statement with the SEC. Form F-3 (known as the "short form") requires less detail and may be used by foreign private issuers that are already SEC registrants and meet specific requirements. Companies wishing to list on NASDAQ without raising capital may use the Form 20-F registration statement.

Preparing the registration statement

The process of preparing and filing a registration statement is complicated, time consuming and technical. Furnishing the requisite information and complying with all applicable SEC rules in an efficient manner require significant planning and coordination. The company's management team, lawyers and accountants will expend a great deal of effort to help the company meet these requirements.

It is during the preparation process that the scheduled timetable for going public can fall behind, causing a delay in the anticipated filing date. It is therefore imperative that the entire team:

- be familiar with the registration statement requirements;
- be cognizant of the deadlines set;
- regularly assess the status of the various sections of the registration statement; and
- ensure that reviews of each section are completed in a timely manner.

The following discussion focuses on the financial information requirements.

Financial information

The SEC has specific and sometimes complex rules regarding the content and age of the financial statements that must be presented in a registration statement and a company's independent accountant can be invaluable in helping to interpret these rules.

In a Form F-1 registration statement, a foreign private issuer must generally present audited financial statements under US GAAP, IFRS or another comprehensive body of accounting principles. If the basis of financial statement presentation is other than US GAAP or IFRS, a reconciliation from that comprehensive basis of presentation to US GAAP must also be provided.

In light of the convergence of IFRS and US GAAP, companies contemplating an IPO are now carefully considering the selection of their primary basis of accounting. Virtually all Chinese companies listed only

in the United States have chosen to present financial statements under US GAAP in order to increase the comparability of their financial information with peer companies which may also report under US GAAP. However, there are a number of Chinese and Hong Kong companies in the telecommunications, oil and aviation industries which are listed in both Hong Kong and the United States that have prepared their financial statements under either Hong Kong Financial Reporting Standards (HKFRS) or IFRS because of the statutory requirements in Hong Kong. In December 2007 the SEC issued guidance which eliminated the requirement for US GAAP reconciliations for foreign private issuers with IFRS financial statements. The SEC was very specific that in order to qualify for the elimination of US GAAP reconciliation, the financial statements must be prepared in accordance with IFRS as issued by the IASB and not an equivalent IFRS basis (eg, HKFRS or IFRS as adopted by the European Union will not qualify). Financial statements prepared in accordance with a comprehensive body of accounting principles other than US GAAP or IFRS as issued by the IASB will continue to be reconciled to US GAAP. As IFRS and US GAAP continue to converge, a company should consult its accountants and other advisors on its choice of an accounting basis on which to prepare the financial statements.

If a Chinese or Hong Kong company chooses to present its financial statements according to US GAAP or IFRS as issued by the IASB, the following must be included:

- a balance sheet for the two most recent financial years;
- an income statement (profit and loss account) for the last two years;
- a statement of cash flows for the last two years; and
- a statement of changes in shareholders' equity for the last two years.

Irrespective of the method of presentation, the financial statements must be audited under the standards of the Public Company Accounting Oversight Board (PCAOB) by an accounting firm registered with the PCAOB.

Age of financial statements

In the case of an IPO, the audited financial statements must generally be no more than 12 months old at the time of filing when the registration statements become effective, although this may be increased to 15 months if the foreign private issuer is already a public company in its home country or another jurisdiction. As a practical matter, market practice for IPOs will usually require financial statements for the most recent fiscal year.

If the last audited financial statements included in the registration statement are more than nine months old, the foreign private issuer must also include consolidated interim financial statements covering at least the first six months of the current financial year with comparatives from the same period of the prior year.

The disclosure requirements for interim financial statements are significantly less than for their annual equivalents, but they must still be reconciled to US GAAP if the financial statements are based on standards other than US GAAP or IFRS. The interim financial statements need not be audited, but the company and underwriter may request the independent accountant to audit or review them under the relevant PCAOB standards.

Selected financial information

Certain selected financial information summarized from the balance sheets and income statements for the last five years (or from the company's inception, if less) should be included. This information can be presented either under the GAAP used in the primary financial statements and reconciled to US GAAP for the two most recent years, or in accordance with US GAAP or IFRS. Selected financial data for either or both of the earliest two financial years of the five-year period may be omitted if the company can represent that such information cannot be provided without unreasonable cost or effort. Selected financial data should also be included for any interim financial statements included in the prospectus.

For first-time adopters of IFRS, General Instruction G provides that the selected financial information shall be based on financial statements prepared in accordance with IFRS and shall be presented for the two most recent financial years.

Separate financial statements for other businesses

Separate audited financial statements may be required for businesses acquired or to be acquired if any one of the three significance criteria is met. Separate audited financial statements may also be required for significant investees that are accounted for by the registrant using the equity method. The significance tests are performed using financial statements

prepared under US GAAP.

If the significance tests are met, Regulation S-X requires the inclusion of summarized financial information or filing of separate audited financial statements of the business acquired or to be acquired, or the significant investee accounted for by the equity method. The financial information requirement ranges from one to three years and may require reconciliation to US GAAP for up to two years, depending on whether certain significance criteria are met.

Separate financial statements for financial guarantors may also be required if certain conditions are met.

If separate financial statements must be filed for the business acquiree, potential acquiree, parent company or significant investee accounted for by the equity method, those financial statements must be audited under the standards of the PCAOB.

In addition, unaudited interim financial statements of the acquiree may be required to meet timeliness requirements.

Parent company financial statements

Regulation S-X requires the filing of the condensed financial information of the registrant when the restricted net assets of consolidated subsidiaries exceed 25% of consolidated net assets as of the end of the most recently completed fiscal year. "Restricted net assets" means the proportionate share of the net assets of the consolidated subsidiaries which may not be transferred to the parent company by subsidiaries in the form of loans, advances or cash dividends without the consent of a third party. Many Chinese companies would fall within the scope of this rule and be required to furnish the parent company financials as a schedule to the financial statements.

Pro forma financial information

The objective of *pro forma* financial information is to provide investors with information about the continuing impact of a particular transaction by showing how it might have affected historical financial statements if the transaction had been consummated at an earlier date.

The presentation of *pro forma* financial information is required when:

- a significant business combination has occurred in the latest fiscal year or subsequent interim period, or is probable;
- a disposition of a significant portion of a business has occurred or is probable, and is not fully reflected in the historical financial statements;
- the registrant was previously part of another entity and such presentation is necessary to reflect the operations and financial position of the registrant as an autonomous entity; or
- a consummation of other events or transactions has occurred or is probable for which *pro forma* information would be material to investors.

Background and compensation of company officers, directors and principal shareholders

Form F-1 requires that a company identify and describe:

- the business experience of its executive officers and directors;
- their aggregate compensation;
- the security holdings of directors and principal shareholders;
- transactions with, and loans to, officers, directors and principal shareholders; and
- information regarding transactions with, and compensation paid to, its promoters.

Disclosure of compensation is required on an individual basis only when it is required in the company's home country or is otherwise publicly disclosed by the company.

Transparent disclosure of all compensation and financial relationships with management and directors has been a focus of regulators in recent years and is essential for good corporate governance.

Operational and financial review and prospects

The operational and financial review and prospects, previously referred to as management discussion and analysis, is a discussion by the company's management of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements. Also included is a discussion of critical factors and trends which are anticipated to have a material effect on the company's financial condition and results of operations in future periods. The information provided must relate to all separate segments of the company.

The SEC continues to focus on the operational and financial review and prospects in its review of registration statements, so it is important that this section be carefully drafted. It must be written objectively, disclosing both favorable and unfavorable developments.

Specific items include the following:

- Operating results – companies should describe significant factors and trends, including unusual or infrequent events or new developments, which materially affect income from operations, indicating the extent to which income has been affected. Any other significant component

of revenue or expense necessary to understand the company's results of operations should also be included. Where material, the impact of inflation, foreign currencies and governmental and economic policies should also be explained.

- Liquidity and capital resources – companies should provide information regarding their short and long-term liquidity, describing significant trends. Included should be:
  - a description of the internal and external sources of liquidity;
  - an evaluation of the sources and amounts of the company's cash flows;
  - information on the level of borrowings;
  - details of financial instruments used;
  - treasury policies; and
  - details of the company's material commitments for capital expenditures.
- Research and development, patents and licenses – companies should provide a description of their research and development policies for the last three years and include the costs, if significant.
- Trend information – companies should identify the most significant trends in production, sales and inventory, the state of the order book and costs and selling prices since the latest financial year end. The company should also discuss any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's revenues, profitability, liquidity or capital resources.
- Off-balance sheet arrangements – companies should discuss all off-balance sheet arrangements that have, or are likely to have, a material effect on the company. This discussion should include:
  - their business purpose and importance to the company;
  - the associated revenues, expenses and cash flow; and
  - any known event that may result in a change in the arrangements.
- Contractual obligations – companies should provide all contractual obligations as of the latest balance-sheet date, grouped at a minimum level of:
  - long-term obligations;
  - capital (finance) lease obligations;
  - operating lease obligations;
  - purchase obligations; and
  - other long-term liabilities.

  The payments relating to these should be grouped by payment period at a minimum level of less than one year, one to three years, three to five years and more than five years.
- Non-GAAP financial measures – companies that disclose or release publicly any material non-public information that includes a non-GAAP financial measure will be required to include, in the same disclosure or release, a presentation of the most directly comparable GAAP financial measure and a reconciliation of the disclosed non-GAAP financial measure to the most directly comparable GAAP financial measure. Regulation G also provides that a non-GAAP financial measure, taken together with the accompanying information, may not misstate a material fact or omit to state a material fact necessary to make the presentation of the non-GAAP financial measure not misleading, in light of the circumstances under which it is presented. This has been an area of significant SEC focus in recent years and thus all non-GAAP measures should be carefully considered.

Other non-financial related disclosures that are required in a registration statement include, but are not limited to:

- legal proceedings;
- the identity of directors;
- senior management and advisors;
- details of the offering;
- the history and developments of the company;
- safe harbor disclosures; and
- various exhibits and statutory information.

Sources of SEC technical requirements

The requirements noted above are derived from the following SEC rules, regulations and interpretations which specify the form and content of registration statements, including the requirements for financial statements and for the other financial information to be included:

- Regulation S-X – the SEC's principal accounting regulation is Regulation S-X, which specifies the financial statements to be included in SEC filings and provides rules and guidance on their form and content.
- Regulation S-K – Regulation S-K contains SEC disclosure requirements for the non-financial statement portion of filings (including the industry guides), otherwise referred to as the "forepart" of the document.
- Financial reporting releases – these are designed to communicate the SEC's positions on accounting, auditing principles and practices. They are used to adopt, amend or interpret rules and regulations relating to accounting and auditing issues or financial statement disclosures.
- Staff accounting bulletins – these are

interpretations and practices that the SEC staff follows. They are generally required to be followed by registrants even though the SEC commissioners have not formally approved them.
- Regulation S-T – Regulation S-T governs the preparation and submission of documents filed via the SEC's Electronic Data Gathering, Analysis and Retrieval system.

Underwriters' due diligence

The underwriters will perform the necessary procedures to provide reasonable grounds for their belief that, as of the effective date, the registration statement contains no significant untrue or misleading information, and that no material information has been omitted. These procedures are referred to as "due diligence' and serve as the underwriters" primary legal defense in any action brought against them. As part of their due diligence procedures, the underwriters request comfort letters from the company's independent accountants with respect to certain financial information that appears in its registration statement outside the financial statements and on events subsequent to the date of the accountants' report.

Generally, the more information on which the underwriters seek comfort, the more expensive and time consuming the process becomes. In light of this, and to avoid any misunderstandings and undue delays, it is important that a company, its independent accountants and underwriters agree, during the early stages of the registration process, on the information on which the independent accountants will be providing comfort. Typically, two comfort letters are issued to the underwriters: one at the time that the underwriting agreement is signed (usually the pricing date), and an updated letter on the closing date.

Ongoing reporting requirements

It is generally recommended that a company prepare for life as a foreign private issuer as early as two years before the IPO. This timeframe allows the company to get comfortable with the SEC reporting requirements and their content and costs, including the demands of complying with Section 404 of Sarbanes-Oxley. This preparation would also include actively managing the company's reputation through regular communication with analysts, investors and the financial media to ensure that its story is accurately reported.

Some of the more significant requirements of a foreign private issuer include the following.

Audit committee

The SEC requires all issuers to have an audit committee. The audit committee should consist of three to five members. The size of the audit committee is dependent on the company size and the complexity of the business model.

The responsibilities of the audit committee include:

- pre-approving audit and non-audit services provided by the public accountant;
- reviewing reports from the auditor on the company's rationale for its choices of critical accounting policies;
- overseeing the audit engagement, including appointment and compensation; and
- resolving disagreements between management and the auditor on financial reporting.

Sarbanes-Oxley requires that each member be independent and recommends that at least one member be a financial expert.

An independent audit committee member, as stipulated in Sarbanes-Oxley, can accept only director fees from the company. The independent audit committee member cannot accept any other remuneration from the company and cannot be an affiliated person with the company or any of its subsidiaries. Boards must be familiar with the new rules of the particular stock exchange or market in which their company trades.

To be an audit committee financial expert, an audit committee member must:

- have an understanding of economic and accounting principles;
- comprehend how financial reporting choices and accounting policies can affect a company's financial reports; and
- possess an understanding of internal controls and procedures.

Under Sarbanes-Oxley and SEC rules, companies will be required to disclose the number and names of the audit committee financial experts and, if none are disclosed, explain why no such person is on the audit committee.

IPO issuers must have at least one independent audit committee member at the time of listing, a majority of independent members within 90 days and a fully independent audit committee within one year of listing. Exemptions are available to foreign private issuers with respect to the "affiliated person" prohibition, which allow

certain affiliated persons to be members of the audit committee.

SEC annual reporting requirements

Once a foreign private issuer has publicly placed securities in the United States, it must file an annual report on Form 20-F with the SEC no later than six months after each financial year end. In September 2008, in order to enhance the information that is available to investors, the SEC adopted amendments to accelerate the filing deadline from within six months of an issuer's fiscal year end to four months of the foreign private issuer's fiscal year end after a three-year transition period. A foreign private issuer must begin to comply with the requirement to file its Form 20-F annual report on an accelerated basis for its first fiscal year ending on or after December 15 2011.

The financial statement requirements of Form 20-F are similar to those of Form F-1. In addition, the foreign private issuer must submit some of the other information about the business required in Form F-1, such as:

- the identity of the directors, senior management and advisors;
- key information relating to the foreign private issuer's financial condition, capitalization and risk factors;
- information on the company, including its operations, products and services, and plans for future increases or decreases;
- information relating to directors, senior management and employees, including compensation paid to the company's directors and members of its administrative, supervisory or management bodies. This may be shown on an aggregate basis if the individual information is not otherwise publicly available; and
- major shareholders and related-party transactions.

In addition to the annual submission of Form 20-F, a foreign private issuer is required to furnish promptly on Form 6-K such material information that is:

- made or required to be made public in the local domicile;
- filed or required to be filed with a stock exchange; or
- distributed or required to be distributed to shareholders.

For example, interim financial statements (eg, quarterly financial statements) issued in the company's local market in local GAAP should be furnished via a Form 6-K submission.

In February 2008 the SEC proposed to require foreign private issuers to provide financial information and related *pro forma* information under Regulation S-X within their annual reports on Form 20-F for highly significant consummated acquisitions. The disclosure requirement would be triggered at the 50% or greater significance threshold level and would require financial statements for three fiscal years of the acquired entity. Companies should discuss with their advisors to understand the latest SEC rules and reporting requirements.

NASDAQ interim requirements

NASDAQ requires a non-US issuer to provide in a press release, which also must be submitted on a Form 6-K, an interim balance sheet and semi-annual income statement, no later than six months following the end of the issuer's second fiscal quarter. Under the rule, the information provided must be translated into English, but need not be reconciled to US GAAP. The new rule is effective for interim periods ending after January 1 2006.

Compliance with Sarbanes-Oxley

Enacted on July 30 2002 in response to several major corporate accounting scandals, Sarbanes-Oxley significantly reformed US securities laws and prescribed fundamental changes to how audit committees, management and auditors interact and carry out their responsibilities.

Sarbanes-Oxley has had a profound impact on public companies, affecting financial reporting for foreign private issuers in important ways. Section 302 requires that the chief executive officer (CEO) and chief financial officer (CFO) of a public company each certify the financial and other information contained in the company's annual report on Form 20-F. Section 404 requires the CEO and CFO of a public company each to certify in the report that:

- they are responsible for establishing and maintaining internal controls over financial reporting; and
- they have designed such internal controls, or caused them to be designed, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

The company's independent accountant must then independently test and issue an opinion on the effectiveness of the controls, in addition to the opinion on the fair presentation of the financial statements.

The passage of Dodd-Frank ended the series of deferrals of Section 404(b) of Sarbanes-Oxley smaller public reporting companies (those with a market capitalization of under $75 million), making these companies permanently exempt from the requirement to have an auditor provide an opinion about the effectiveness of internal controls over financial reporting. These companies will have to comply with Sarbanes-Oxley's requirement that management assess and report on the effectiveness of internal control over financial reporting. In general, a registrant will be subject to the Section 404 requirements from its second annual report filing. When compliance is required, it will be for the entire financial year, so prospective foreign private issuers should ready themselves for implementation at the earliest opportunity.

Certification by management under Section 302

Section 302 requires the CEO and CFO of a public entity each to certify, based on his or her knowledge, that:

- the annual and quarterly reports contain no untrue statement of a material fact and omit no material facts which would make the statements in the annual or quarterly reports misleading in light of the circumstances under which they were made;
- the financial statements and other financial information included in the report fairly present, in all material respects, the financial condition and operating results of the issuer as of and for the periods presented in the report; and
- the CEO and CFO are responsible for designing and maintaining disclosure controls and procedures and internal controls over financial reporting, and for disclosing any changes or deficiencies in those controls to the auditors and the audit committee of the board of directors.

The certification under Section 302 is filed as an exhibit to the annual or quarterly report to which it relates.

Certification under Section 906

Section 906 mandates that any annual or quarterly public company report that contains financial statements filed with the SEC be accompanied by a written statement by the issuer's chief executive officer and chief financial officer (or the equivalent thereof), certifying that:

- the report fully complies with the related requirements of specific US securities law; and
- the information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

Section 906 expressly created new criminal penalties for a knowingly or willfully false certification. The certifications are to be filed as an exhibit in the report to which they relate.

Reporting under Section 404

Section 404 on the management assessment of internal controls may be the most challenging aspect of Sarbanes-Oxley. It requires SEC-registered companies in the United States, and their independent accountants, to report on the effectiveness of the company's internal control over financial reporting. In general, preparation for Section 404 takes between nine and 18 months, depending on the size and complexity of the company and the level of maturity of its internal control over financial reporting at the time of listing. Although Section 404 has now been around for many years, companies listing for the first time all face very similar challenges.

A company's internal control report must contain the following information and be included in its annual report on Form 20-F:

- a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the company;
- a statement identifying the framework used by management to evaluate the effectiveness of the company's internal control over financial reporting;
- management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of the company's most recent fiscal year, including a statement as to whether internal control over financial reporting is effective; and
- a statement that the independent accountant that audited the financial statements included in the annual report has issued an attestation report on the company's internal control over financial reporting.

The process of documenting, testing by management and auditing a company's internal control is very time consuming and detailed. Appropriate planning before a company's registration with the SEC is key to the success of the Sarbanes-Oxley process.

XBRL

In January 2009 the SEC released rules requiring companies to provide financial information in interactive data format that is intended to improve its usefulness to investors. In this format, financial statement information can be downloaded directly into spreadsheets, analyzed in a variety of ways using commercial off-the-shelf software and used within investment models in other software formats. The rules will apply to public companies and foreign private issuers that prepare their financial statements in accordance with US GAAP, and foreign private issuers that prepare their financial statements using IFRS as issued by the IASB. Companies will provide their financial statements to the SEC and on their corporate websites in interactive data format using the eXtensible Business Reporting Language (XBRL). The new rules are intended not only to make financial information easier for investors to analyze, but also to assist in automating regulatory filings and business information processing. Interactive data has the potential to increase the speed, accuracy and usability of financial disclosure, and eventually reduce costs.

Substantially all large accelerated filers using US GAAP have now submitted XBRL-formatted disclosure information. All remaining filers using US GAAP and all foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB will be required to make their first submissions of XBRL-formatted financial information beginning with periodic reports for the fiscal period ending on or after June 15 2011.

Accountant's role in a US public offering

A company's independent accountant will play a key role throughout the registration process. This chapter now discusses the requirements of the independent accountant and how the independent accountant is involved in the registration process.

Requirements of the independent accountant (commonly referred to as the auditor)

To qualify as a company's independent accountant, the independent accountant must be registered with the US PCAOB.

The PCAOB is a private, not-for-profit corporation that was created by Sarbanes-Oxley and is subject to oversight by the SEC. It is responsible for overseeing the audits of public companies for the protection of investors and furthering the public interest in the preparation of informative, accurate and independent audit reports. The board is also responsible for US auditing standards, in addition to standards of quality control, ethics and independence for independent accountants of US issuers.

Generally, PCAOB registration is possible for any auditing firm, US or otherwise, that intends to provide audit services to one or more US public companies. Once registered with the PCAOB, the firm will be subject to inspections, which will occur annually for firms with 100 or more US registrants and tri-annually for firms with fewer than 100 registrants. The board is further empowered to conduct investigations into its registered auditing firms as well as registrants and, in some circumstances, to perform disciplinary proceedings.

While many firms are eligible to be auditors, the actual selection of an auditing firm should be based on:

- its experience with US public company financial reporting;
- its expertise in US GAAP and/or IFRS;
- its expertise in the auditing standards of the PCAOB; and
- its reputation and experience with US IPOs and other US capital markets transactions.

Other factors to consider are the size of the firm's local and global resources and its experience in the company's industry.

The SEC and the PCAOB govern much of the relationship between a company and its independent accountant, including some requirements which may not be applicable in a company's home country. Some items to consider are as follows.

Accountant's association with SEC filings

While the independent accountant gives an opinion on the company's financial statements and on the company's internal controls under Sarbanes-Oxley, the company's management remains responsible for such information and for the accuracy of other information included in filings with the SEC.

Accountant's reporting of illegal acts

The SEC requires that the independent accountant furnish the SEC with information on certain uncorrected illegal acts that have come to its attention.

Independence

The SEC has strict independence requirements between a registrant and its independent accountant. These requirements apply equally to US and non-US registrants.

For the registrant, the independence

consideration includes the requirement to have the audit committee pre-approve all audit and non-audit services provided by the independent accountant.

For the independent accountant, the requirements include the following:

- Certain non-audit services – the independent accountant is prohibited from providing certain non-audit services to the issuer. These services include bookkeeping, the design of financial information systems, appraisal or valuation services, fairness opinions or contribution-in-kind reports, certain actuarial services, internal audit outsourcing services, management functions, human resource services, brokerage, investment adviser or investment banking services and legal services.
- Partner rotation – in general, audit partners are prohibited from providing audit services to the same client for more than five years.
- Cooling-off period – an accounting firm is prohibited from auditing an issuer's financial statements if certain members of the issuer's management were members of the audit engagement team within a one-year period preceding the commencement of audit procedures.
- Communications with audit committees – the independent accountant is required to communicate to the audit committee certain matters, including critical accounting policies and material weaknesses in a company's internal controls.
- Partner compensation – the compensation of the audit partner may not depend on selling engagements to the audit client other than audit, review or attest services.

The independent accountant is required to have a quality review partner engaged on each registrant's audits. If the audit opinion is from a non-US registered accounting firm, Appendix K of the American Institute of Certified Public Accountants (AICPA) SEC Practice Section Reference Manual sets forth that an additional review is required to address issues related to independence, US generally accepted accounting standards and US GAAP for filings by foreign private issuers with the SEC. This review process should be properly managed as an integral part of the audit.

Involvement of an independent accountant

The right independent accountant will provide more value than simply completing the audit. An experienced and knowledgeable independent accountant with the appropriate complement of resources in the region or country will be able to provide advice that can minimize and help to avoid some of the impediments to success that invariably arise during the IPO process related to strategy and technical issues.

The independent accountant may provide advice which can be extremely useful in the planning stage of the process, and will help the company to evaluate alternative approaches and establish a realistic plan to enter the US capital markets and ensure that potential issues are identified and resolved in a proactive manner.

Technical accounting advice from an independent accountant with in-depth knowledge and experience with US GAAP, SEC reporting requirements and IFRS (if applicable) will not only greatly assist a company in the preparation of its registration statement, but also facilitate the speed and ease of obtaining SEC permission for the registration statement to become effective. For example, guidance on the identification of potentially sensitive or problematic accounting issues, financial disclosure issues and the overall transparency of financial reporting allows them to be addressed in a timely manner, which ensures a smooth registration statement filing.

In addition, the independent accountant is involved in the following aspects of the registration process.

Audits of the financial statements

The process of auditing multiple years of financial statements and related disclosures for public offerings is significant and involved. An established relationship with an independent accountant that knows the company's business, coupled with thorough preparation on the company's part, will facilitate the speed and effectiveness of the process. This can be crucial to the success of the offering.

Delivery of a comfort letter

A comfort letter, prepared in accordance with the auditing standards issued by the AICPA, will be required by the issuer's underwriters in their due diligence efforts. This letter details certain procedures that the company's independent accountant has performed at the request of the underwriters, including matters concerning financial statements or other financial information contained in the prospectus.

Review of the prospectus

The independent accountant can perform a review of the prospectus and review the

company's responses to the SEC's comment letters. The comment letter process frequently generates three to five rounds of letters from the SEC, based on its review of the proposed registration statement. This process can take anywhere from several weeks to several months to complete; addressing these comment letters usually requires the combined efforts of the company and all its advisors.

Advisory accountant

In the past, the only accountant involved in a registration was the independent accountant. Today, however, many companies engage a second accountant, known as the advisory accountant, to assist with financial reporting and other matters related to the IPO process. Because of strict SEC independence rules, the independent accountant is generally precluded from directly assisting its client in the preparation of its financial information. An advisory accountant can be used to supplement the expertise and capabilities of either the company or its independent accountant. The increasing complexity of accounting requirements and investor demands for meaningful financial disclosure often outstrip the capabilities of companies that have not historically been subject to the demands of a public company.

Furthermore, with businesses evolving to include more complex business structures and transactions, and the increasing complexity of accounting requirements, companies preparing for a US offering face severe challenges. The Sarbanes-Oxley regulatory environment has raised the bar on the amount of advance preparation and careful planning necessary for the execution of a successful IPO in the US capital markets. The board of directors and the audit committee also carefully assess the auditors' independence with respect to management's preparation of financial statements. For these reasons, companies frequently seek transaction support and advisory services from a second, non-signing accounting firm (ie, the advisory accountant) that is not as restricted by professional and statutory independence standards.

Some of the principal ways in which an advisory accountant can assist a company with its US IPO preparations and ongoing reporting requirements are as follows.

Identification and resolution of critical accounting issues

The transactions involved in restructuring or reorganizing companies before an IPO and ongoing transactions are complex, as are the accounting implications. A thorough understanding of the accounting consequences and alternatives of these transactions is crucial for management to prepare its financial statements.

The advisory accountant should have extensive experience with complex capital markets transactions and can take a problem-solving role in the transaction. The advisory accountant will advise the company, without the restrictions of independence standards, on the relevant accounting standards and the application of these in the specific situation, and provide the company with different options to help it resolve its complex accounting and reporting matters. If the accounting involves valuation, the advisory accounting can also help the company to carry out a valuation in order to fulfill the financial reporting requirements. Having the complex accounting issues well analyzed and documented will help to facilitate a smoother audit by the independent accountant.

IPO readiness – design and implementation of internal controls

Although Section 404 does not require companies to provide management's assessment as to the effectiveness of the company's internal controls over financial reporting until the year after the company files its first annual report, the identification and understanding of internal control weaknesses is an important element of assessing a company's IPO readiness. This is also one of the areas about which investment banks are most concerned.

The Section 404 internal control structure documentation, testing and reporting requirements are substantial undertakings. The risks and consequences of a breakdown of internal controls over external financial reporting are also significant.

The advisory accountant can provide direct assistance with the design, documentation, testing and remediation of internal controls over financial reporting to aid in the company's IPO readiness assessment and compliance with Section 404.

Tax advisory services

China's rapid economic rise and integration into the global economy has generated additional business opportunities. However, businesses are facing pressures and challenges due to the complexity of the domestic and international tax environment in which they operate and in managing the reporting of uncertain tax positions under US GAAP.

In order for businesses to develop further or to improve their chances of

survival, they must aim to improve their overall efficiency, increase their attractiveness to investors and manage their corporate tax risks. In addition, businesses must analyze their business-related tax costs and understand their positions so that informed business decisions can be made to achieve promises made to investors.

A competent tax advisor can help companies to identify and minimize tax risks while at the same time recommending appropriate tax planning throughout and after an IPO by providing services such as:

- a pre-IPO tax health check;
- the identification of regulatory changes that are relevant to the company; and
- a review of corporate structure for effective tax planning.

Finally, equity-based compensation plans (eg, employee share option plans, employee share award plans and employee share purchase plans) are becoming a regular feature of employee remuneration packages. A tax advisor can provide companies with tailor-made solutions to design and implement such compensation plans and advise on the tax implications of these plans for both companies and their employees.

Post-IPO services

Increasingly, in the United States and elsewhere, companies have realized the importance of working with the right accounting advisors to supplement their internal resources and provide the depth of experience necessary to address complex accounting issues such as stock compensation, business combinations, variable interest entities and financial instruments as they arise.

This translates into freeing up management time to deal with more critical business processes, resulting in the enhancement of business value and savings in terms of cost and efforts while addressing the need for heightened regulatory scrutiny.

Advisory accountants can help to embed the accounting procedures and controls required to make the financial reporting process more transparent and self-sufficient. In addition, advisory accountants can provide regular updates on changes to US GAAP and IFRS and training of accounting and finance staff. This can help companies to plan ahead for changes in GAAP before and as they happen, rather than being caught by surprise.

Conclusion

A thorough understanding of the present and future accounting environment and SEC reporting requirements is critical during a company's US IPO and its life as a US listed company. The independent accountants and advisory accountants are a crucial part of the team to help a company understand these requirements and make the US IPO successful.

www.pwc.com

Helping you stay focused

Want to go public? For more than 20 years, PwC has advised China and Hong Kong companies on navigating complex financial reporting, controls and regulatory obstacles to successfully list in the US.

Whatever your business and whatever your goals, working with PwC makes things that little bit easier. We help you stay focused on what's important.

To find out how we can add value to your business, talk to one of our people in Beijing, Shanghai or Hong Kong.

Laura Butler (Beijing)
laura.butler@cn.pwc.com
+86 (10) 6533 2363

Min Xiao (Shanghai)
min.xiao@cn.pwc.com
+86 (21) 2323 3685

Kennedy Liu (Hong Kong)
kennedy.liu@hk.pwc.com
+852 2289 1881

Loretta Fong (Hong Kong)
loretta.wh.fong@hk.pwc.com
+852 2289 1314

pwc

5

The role of the US law firm

Leiming Chen, Chris Lin and Daniel Fertig, Simpson Thacher & Bartlett LLP

Simpson Thacher and Bartlett LLP provide a detailed and practical summary of the US listing process, with a particular focus aimed at Chinese issuers. It covers the applicable securities laws and regulations and NASDAQ listing rules relevant to registrants and foreign private issuers; filing and listing procedures and requirements; disclosure and financial information requirements; post-listing reporting obligations; corporate governance rules and requirements under the Sarbanes-Oxley Act and NASDAQ listing rules; and the due diligence process and standards of liability, among other areas.

Select US legal and regulatory issues relating to a NASDAQ listing

The US capital markets are an important source of funds for non-US companies. As of December 31 2010, over 300 non-US issuers were listed on the NASDAQ Stock Market, including 143 Chinese companies, 18 Hong Kong companies, one Macau company and six Taiwan companies. NASDAQ listings of Chinese companies have been particularly robust in the past two years, with 33 and 44 new listings of Chinese companies in 2009 and 2010, respectively. In addition, over 420 non-US issuers were listed on the New York Stock Exchange, including 76 Chinese companies, two Hong Kong companies and five Taiwan companies. Numerous other non-US issuers have also accessed the US capital markets via private placements of securities. This chapter introduces the principal US securities law requirements applicable in connection with an initial public offering (IPO) of securities in the United States on NASDAQ by companies meeting the definition of "foreign private issuers," which means any issuer formed under the laws of a jurisdiction outside the United States, unless:

- more than 50% of its outstanding voting securities are beneficially owned by residents of the United States; and
- any one of the following conditions is met:
  - the majority of the executive officers or directors are US citizens or residents;
  - more than 50% of the assets of the issuer are located in the United States; or
  - the business of the issuer is administered principally in the United States.

Applicable principal US securities laws

Securities Act

The US Securities Act of 1933 and related rules and regulations govern generally the offer and sale of securities by an issuer or any other person in the United States or to US persons. A principal objective of the Securities Act is to ensure that material information concerning the issuer and such securities is disclosed to investors, and to provide investors in securities with an adequate basis for making an informed investment decision.

The Securities Act prohibits offers or sales of securities in the United States or to US persons unless made in compliance with the Securities Act's registration and prospectus delivery requirements or in reliance upon an available exemption from such registration requirements. The two main exemptions are Rule 144A, relating to private placements to institutional investors within the United States, and Regulation S, relating to offers and sales of securities that occur outside the United States.

Exchange Act

The US Securities Exchange Act of 1934 governs generally the secondary trading of securities of publicly held corporations upon securities exchanges and over-the-counter markets. The Exchange Act and related rules and regulations require corporations, their directors and officers, and certain other persons to file periodic and other reports with the SEC to ensure that adequate, up-to-date information about issuers is publicly available.

NASDAQ rules

NASDAQ imposes certain reporting and other obligations, including minimum corporate governance standards, on companies listed thereon. Among other things, the Sarbanes-Oxley Act of 2002 required exchanges, including NASDAQ, to strengthen their corporate governance requirements, particularly those relating to audit committees.

Other applicable laws, regulations and requirements

Non-US issuers must also comply with the US Trust Indenture Act of 1939 in connection with public offerings of debt, and the US Investment Company Act of 1940, which prevents an issuer from selling securities in the US market if investment securities represent a high proportion of the issuer's assets. Other legal and regulatory requirements include the rules of the Financial Industry Regulatory Authority, Inc and the securities, or "blue-sky," laws of the various US states.

Procedure for registering a public offering of securities in the United States

The registration process is in most respects the same for both US and non-US issuers, and the same basic Securities Act requirements apply to offerings of equity securities and debt securities. A registration statement on Form F-1 must be filed with the Securities and Exchange Commission (SEC) in connection with an IPO in the United States by a non-US issuer.
The signatories – who include the principal executive, financial and accounting officers, and at least a majority of the board, as well as directors who did not sign the registration statement – are subject to

potential liability under the Securities Act.

The registration statement will be reviewed and commented upon by the SEC staff, which normally takes approximately 30 days. The issuer will then file an amended registration statement responding to the comments received. Several rounds of comments are typically necessary for a first-time registrant. In addition to attorneys, who will comment on the general disclosure, the SEC review team will include accountants, who will focus on the financial statements and related disclosures.

A preliminary prospectus is prepared by the issuer and used for the preliminary marketing of the securities, following clearance of a majority of the SEC staff's comments and amendment of the registration statement to reflect such comments. When the registration statement becomes effective following preliminary marketing and resolution of all SEC comments, the issuer and the lead underwriter will determine the offering price of the securities and sales may be consummated in the United States.

Confidential submission

A non-US issuer undertaking an IPO in the United States may, and usually does, request that the SEC staff review paper copies of the registration statement submitted on a confidential basis prior to making a formal public filing. The draft registration statement must be a complete and essentially final document that includes all information required for a public filing, particularly audited financial statements. A public filing is typically made after resolving the majority of any SEC comments and must occur no later than the printing of a preliminary prospectus. After initial registration, the SEC generally will not review filings by a non-US issuer on a confidential basis.

Disclosure requirements

The basic disclosure requirements for a non-US issuer conducting an SEC-registered public offering in the United States are set forth in the registration statement forms to be filed with the SEC in connection with the offering (typically Form F-1 or F-3) and in Form 20-F, which is used for both annual reports and certain Exchange Act registration statements. The registration statement and prospectus must include detailed disclosure regarding the issuer, its business and the terms of the offering, as well as specified financial statements and other financial data relating to the issuer.

Required financial statements

Issuers are generally required to include, in the prospectus forming part of the registration statement on Form F-1:

- consolidated audited balance sheets as of the end of the two most recent fiscal years;
- consolidated audited statements of income and cash flows for each of the three fiscal years immediately preceding the date of the most recent audited balance sheet being filed; and
- selected financial data for the most recent five fiscal years.

Despite these requirements, the SEC permits first-time non-US registrants which prepare their financial statements in accordance with US generally accepted accounting principles (US GAAP) or International Financial Reporting Standards (IFRS) as published by the International Accounting Standards Boards (IASB) to file initially US GAAP financial statements and selected financial data for only the two most recently completed fiscal years, although selected financial data prepared in accordance with GAAP used in the issuer's primary financial statements is still required for the full five years.

Unaudited financial statements for interim periods may also have to be included in the registration statement. Under the SEC's rules, the last year of audited financial statements included in a registration statement may not be older than 15 months at the time the registration statement is declared effective.

A non-US issuer has a choice generally of providing either:

- financial statements prepared in accordance with US GAAP;
- financial statements prepared in accordance with IASB-issued IFRS;
- financial statements prepared in accordance with local GAAP, which are reconciled to US GAAP or IASB-issued IFRS; or
- financial statements prepared in accordance with jurisdictional variations and other deviations of IASB-issued IFRS, which are reconciled to IASB-issued IFRS, as noted above.

Applicable publicity restrictions

General principles

US securities laws aimed to give investors the opportunity to make their investment decisions based on the written prospectus and strictly limited other forms of publicity. Any oral or written communication or other publicity by an issuer or other offering participants which occurs outside the

context of the statutory prospectus could be deemed to constitute "gun jumping" and a violation of US securities laws.

In the event of impermissible offering activities, the SEC can impose a "cooling-off" period which will delay a transaction. In addition, the SEC may also require an issuer to include the content of any impermissible public statements regarding the issuer in its prospectus. Any written communications might also be deemed to be a prospectus issued in violation of the registration requirements of the Securities Act.

In rules effective from December 2005 as part of the Securities Offering Reform, the SEC liberalized the restrictions on communications around the time of a registered offering. In the IPO context, however, gun-jumping violations remain a significant concern.

Publicity restrictions prior to an IPO

The nature of the publicity restrictions observed by an issuer planning an initial registered offering in the United States change depending on the status of its preparation.

Before filing the registration statement

Once preparation for an offering has begun and prior to filing a registration statement, no activity that could be considered an "offer to sell" a security is permitted. The SEC defines "offer" very broadly to include any form of publicity that is intended to condition the market for or arouse public interest in the offered securities, even if no express offer to sell securities is made. This period extends until public filing of the registration statement via the SEC's EDGAR system.

An issuer and other offering participants must generally avoid any direct reference in the United States to a proposed offering during the pre-filing period. An issuer should also avoid any market conditioning activities in the United States, such as any special promotion of its business, products, prospects or other attributes.

After filing the registration statement, but before it is declared effective

After a registration statement has been publicly filed and before it is declared effective, the same prohibition on US market conditioning activity remains in effect as during the pre-filing period, except:

- oral offers to sell the securities may be made; and
- written offers in the form of a preliminary prospectus may be made.

Following the Securities Offering Reform, the use of additional written materials, referred to as "free writing prospectuses", is also permitted, subject to certain conditions. In the case of a non-reporting or unseasoned issuer, a statutory prospectus (which in the case of a preliminary prospectus for an IPO must include a price range) must normally accompany or precede the free writing prospectus. Investor road-show meetings for an offering have historically been considered oral offers because no written material other than the preliminary prospectus is provided to persons attending the road show.

Although oral communications are permitted during the waiting period, the anti-fraud provisions of the Securities Act apply to oral offers. To minimize the risk of making an oral statement which could later be claimed to have been misleading, road-show participants should attempt to limit the content of their statements to information contained in or derivable from the preliminary prospectus.

After the registration statement is declared effective

After a registration statement has been declared effective by the SEC, oral or written offers and sales of the securities registered thereby may be made in the United States. Delivery of a final prospectus prior to or contemporaneously with such offer or sale is required, although the Securities Offering Reform introduced an "access equals delivery" model that permits delivery of a final prospectus (but not a preliminary prospectus) to be deemed completed by filing the form of final prospectus with the SEC. In the case of an initial registration and listing in the United States, securities dealers will continue to have a prospectus delivery requirement with respect to the offered shares until 25 days after the closing date, and therefore offering participants and US counsel should continue to monitor and review developments and proposed publicity relating to the issuer.

Additional safe harbor provisions

In addition to those discussed above, there are further safe harbors in the rules under the Securities Act specifying activities that will not be considered an "offer" of securities. The safe harbors include:

- offshore press conferences and meetings conducted in accordance with the requirements and conditions set forth in Rule 135e;

- regularly released factual business information consistent with the issuer's historical practice done in the ordinary course of business subject to the conditions set forth in Rule 168;
- "forward-looking information" regarding the issuer and its operations subject to the conditions set forth in Rule 169 for issuers that are subject to Exchange Act reporting requirements or a first-time registrant foreign private issuer that either has a worldwide public float of at least $700 million or has had its equity securities trading on a designated offshore securities market for at least 12 months; and
- communications made by or on behalf of an issuer more than 30 days prior to filing of a registration statement, and that does not reference an offering that is or will be the subject of a registration statement pursuant to Rule 163A passed in connection with the Securities Act Reform. The rule requires that an issuer take reasonable steps to prevent further distribution or publication of any such communication, although a non-US issuer making an initial registration in the United States will want to take a cautious approach and, where possible, rely on one of the other safe harbors described above.

The Internet and corporate websites

Information published on websites is viewed by the SEC as a written communication subject to all of the limitations on written communications discussed above. In order to avoid having the SEC view information published on or hyperlinked from a corporate website as an "offer," a non-US issuer should not distribute any offering-related documents on its website, create a new website or materially expand its existing website until after the offering. Instead it should continue to use its existing website consistent with past practice for ordinary course communications, review all information and remove out-of-date or incorrect information and any information that contradicts anything in the offering documents, and avoid hyperlinking.

Reporting and other obligations following an IPO in the United States

Form 20-F

A non-US issuer subject to the periodic reporting requirements of the Exchange Act must file an annual report on Form 20-F with the SEC within six months of the end of each fiscal year. Such report must also be filed with any US national securities exchange on which securities of the issuer are listed. Starting with annual reports on Form 20-F covering a fiscal year ending on or after December 15 2011, non-US issuers must file their annual reports on Form 20-F within four months of the end of the fiscal year covered by the report.

A number of these disclosure items for annual reports relate to requirements newly imposed by Sarbanes-Oxley, including certifications of the issuer's principal executive officer and principal financial officer.

Form 6-K

Non-US issuers required to file annual reports on Form 20 F must also transmit reports on Form 6-K to the SEC and any US securities exchange upon which the issuer's securities are listed. A Form 6-K report is used to furnish information that a foreign private issuer:

- makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized;
- files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange; or
- distributes or is required to distribute to its security holders, including press releases.

These materials need be filed only to the extent that they are material to the issuer or its subsidiaries. A Form 6-K should be filed promptly after the report or document contained in the Form 6-K has been made public.

Sarbanes-Oxley Act and corporate governance requirements applicable to foreign private issuers

Sarbanes-Oxley and related rules adopted by the SEC have imposed significant new requirements on foreign private issuers that have registered securities under the US federal securities laws. These requirements include the following corporate governance directives.

Audit committee requirements

Sarbanes-Oxley established detailed audit committee requirements. Because these requirements are part of the listing standards of US national securities exchanges, they apply only to foreign private issuers that are listed on a US exchange such as NASDAQ. The requirements include the following:

- Members must be "independent" – audit committees of companies listed on a US exchange must be comprised only of

directors that are "independent" within the meaning of Sarbanes-Oxley.
- Required powers and "whistleblower" procedures – the audit committee or equivalent audit body is required to:
  - be directly responsible for the appointment and oversight of any accounting firm engaged by the issuer;
  - have the authority and resources to engage its own counsel and advisors; and
  - establish "whistleblower" procedures to process confidential anonymous complaints and concerns regarding accounting or auditing matters.
  - Pre-approval of services – the audit committee or equivalent audit body must establish pre-approval policies and procedures under which all audit and permissible non-audit services provided by an outside auditor must, subject to limited exceptions, be approved in advance.

Codes of ethics

A foreign private issuer must:

- disclose in its annual report whether it has adopted a code of ethics for its senior executive officers and senior financial officers and, if it has, make this publicly available and
- disclose changes to, and waivers from, its code of ethics in its annual report or, alternatively, on its website within five business days.

Prohibited conduct

A foreign private issuer may not extend loans or other credit to its directors and executive officers, among other types of prohibited conduct.

Other provisions concerning US-listed foreign private issuers

Reports under Sections 13(d) and 13(g) of Exchange Act

Sections 13(d) and 13(g) of the Exchange Act impose reporting obligations on any person who is, directly or indirectly, the beneficial owner of more than 5% of a class of equity securities which is registered pursuant to Section 12. The specified reports on Schedule 13D or 13G, as the case may be, must be furnished to the issuer, the SEC and the principal US securities exchange on which the security involved is traded. These filings are the responsibility of the shareholder and not the issuer itself.

Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act of 1977 (FCPA) requires companies (both US and non-US) with securities registered under Section 12 of the Exchange Act to maintain accurate books, records and accounts and to devise and maintain a system of internal accounts controls. The FCPA also generally prohibits any offer, payment or gift of any money or anything of value to a foreign official, a foreign political party or an official thereof, or any candidate for foreign political office, for purposes of influencing any act or decision of such foreign official or foreign political party or party official or candidate in his or its official capacity, or inducing such foreign official or political party or party official or candidate to use his or its influence with a foreign government or instrumentality, in either case in order to assist a company in obtaining or retaining business for or with, or directing business to, any person.

Companies, their controlling persons and, in certain cases, their directors, officers, employees or other representatives that violate the FCPA may be subject to criminal penalties, including fines and imprisonment, and may also be subject to civil sanctions, including an action for injunctive relief by the SEC.

Public disclosure of "non-GAAP financial measures" and Regulation G

Any public disclosure by an Exchange Act reporting company of material information that includes a "non-GAAP financial measure" must comply with the disclosure requirements of Regulation G, although there is a limited exemption for foreign private issuers. Regulation G requires that non-GAAP financial measures in public disclosures by reporting companies be accompanied by:

- a presentation of the most directly comparable financial measure calculated and presented in accordance with US GAAP (or local GAAP where the issuer's primary financial statements submitted to the SEC are presented in accordance with local GAAP); and
- a reconciliation of the differences between the non-GAAP financial measure and the most comparable financial measure calculated and presented as described immediately above.

A foreign private issuer is exempt from these requirements if:

- the issuer is listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;
- the non-GAAP financial measure is not derived from or based on a measure

calculated and presented in accordance with US GAAP; and
- the disclosure is made outside the United States or is included in a written communication that is released outside the United States.

Subsequent offering by a public company

The Securities Offering Reform changes, effective from December 2005, significantly liberalized the registration process for subsequent offerings, particularly for large reporting companies referred to as "well-known seasoned issuers" (WKSIs).

A non-US issuer must fulfill the following conditions:

- have been subject to the periodic reporting requirements of the Exchange Act for at least 12 calendar months;
- have filed in a timely manner all Exchange Act reports required to be filed by it in the previous 12 calendar months; and
- have filed at least one annual report with the SEC.

Only then will it be considered a "seasoned issuer" and become eligible to use the Form F-3 registration statement, subject to specific offering requirements. Form F-3 simplifies the offering process by allowing most corporate disclosure to be incorporated by reference from an issuer's existing Exchange Act filings. Form F-3 also may be used for "shelf offerings," involving the filing of a registration statement with basic information that allows for periodic takedowns by means of a supplement providing specific terms of the relevant offering.

Greatly simplified shelf registration procedures are now available to well-known seasoned issuers. WKSIs are eligible to file "automatic shelf registration statements," which become effective immediately upon filing without any prior SEC review (although automatic shelf registration statements may not be used to register securities in the context of business combination or exchange offers). Additional increased flexibility includes the ability:

- to defer specifying in the initial registration statement the amount of securities to be offered, the allocation of registered securities to be offered on a primary and secondary basis, the identity of selling shareholders or a description of the plan of distribution;
- to permit takedowns immediately following the filing of a registration statement; and
- to add additional types of securities by post-effective amendments that would also become effective immediately, among other things.

Shelf registration statements, including automatic shelf registration statements, should be renewed every three years in accordance with SEC rules on the timing and criteria for testing eligibility.

Generally, a seasoned issuer qualifies as a WKSI eligible to take advantage of automatic shelf registration provided that it either:
- has a public float (aggregate worldwide market value of voting and non-voting common stock held by non-affiliates) of at least $700 million; or
- has issued in the last three years at least $1 billion aggregate principal amount of non-convertible securities other than common stock in primary offerings for cash (not exchange) registered under the Securities Act.

Specified factors may make an issuer ineligible, however, including failure to be current in Exchange Act reporting or conviction within the past three years of a felony or misdemeanor relating to fraud, conduct of a regulated financial business or other specified offenses.

Liability under federal security law and due diligence

A non-US issuer becomes subject to potential liability under both the Securities Act and Exchange Act when it conducts an offering of its securities in the United States. The bases for liability are more extensive in the case of a public offering than in the case of private placements.

Securities Act

In connection with an offering of securities in the United States, a non-US issuer and certain other persons could be subject to liability under Sections 11 and 12(a)(2) of the Securities Act, and a person deemed to be a controlling person of the issuer or another person liable under Section 11 or 12 of the act could have so-called "secondary" liability under Section 15.

Section 11

Under Section 11, if a registration statement, when it became effective, contained an untrue statement of a material fact or omitted to state a material fact, any investor that did not know of the misstatement or omission will have a right of action against:

- the issuer;
- the directors of the issuer;

- the principal executive, financial and accounting officers of the issuer;
- in the case of a non-US issuer, the authorized representative of the issuer in the United States;
- any "expert" (eg, the issuer's independent accountants) with respect to statements in the registration statement made on the authority of such expert; and
- the underwriter.

Under Section 11, an issuer is absolutely liable for material misstatements in, or omissions from, the registration statement and it is not necessary for a plaintiff to prove reliance on a particular misstatement or omission or scienter in order to recover damages. By contrast, directors, officers, the authorized US representative and the underwriter may avoid liability if they "had, after reasonable investigation, reasonable ground to believe and did believe" that the statements in the registration statement were true and complete and not misleading. A due diligence process, if conducted properly so as to constitute a "reasonable investigation," can play an important role in directly protecting such persons from liability under Section 11.

Section 11 applies only with respect to SEC-registered public offerings and does not impose liability in the case of Rule 144A and other private offerings in the United States or offerings conducted outside the United States in reliance upon Regulation S.

Section 12(a)(2)

Under Section 12(a)(2), any person purchasing a security may bring an action against any person that offers or sells a security in interstate commerce by means of a prospectus, including a "free writing prospectus" prepared by or on behalf of the issuer or used or referred to by the issuer, or an oral communication which includes a material misstatement or omission unknown to the purchaser. An issuer in a primary offering has Section 12(a)(2) liability even though it is the underwriter, and not the issuer directly, that in fact "offers or sells" the security to the purchaser. Section 12(a)(2) liability attaches only to information conveyed to a purchaser prior to or at the time it becomes contractually committed to purchase securities, and does not take into account any information conveyed to the purchaser only after it has become contractually committed. A defendant may avoid Section 12(a)(2) liability by proving it "did not know, and in the exercise of reasonable care could not have known, of such untruth or omission" contained in the prospectus or oral communication. The SEC's view is that the duty of "reasonable care" required under Section 12(a)(2) is less demanding than the duty of "reasonable investigation" required under Section 11.

Although Section 12(a)(2) is not by its terms limited to securities sold in SEC registered public offerings, a 1995 Supreme Court decision (*Gustafson v Alloyd Company*) has limited its reach in the case of Rule 144A and other private offerings and secondary market transactions.

Section 15

Under Section 15, any person that controls any person liable under Section 11 or 12 is also "liable jointly and severally with and to the same extent as such controlled person" to any person to which the controlled person is liable. However, under Section 15, the controlling person will not be liable if it "had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist." The term "control" has been defined by the SEC to mean "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise."

Exchange Act

A non-US issuer and certain other persons may also be subject to liability under Section 10(b) of the Exchange Act in connection with offerings of securities conducted in the United States or which have some jurisdictional nexus to the United States. Liability may also arise in connection with periodic reports filed with the SEC by a non-US issuer which has registered its securities with the SEC. In addition, a controlling person of a non-US issuer could have secondary liability under Section 20(a).

Section 10(b) and Rule 10b-5

Section 10(b) of the Exchange Act prohibits the use, in connection with the purchase or sale of any security, of any "manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may prescribe." Rule 10b-5 promulgated by the SEC under the Exchange Act prohibits, in connection with the purchase or sale of any security, the use of "any device, scheme or artifice to defraud," the making of "any untrue statement of a material fact" or the omission of a "material fact necessary in order to make the statements made, in the light of the circumstances under which they

were made, not misleading," or the engaging in "any act, practice, or course of business" which operates or would operate to deceive any person

Section 10(b) and Rule 10b-5 liability may result from a material misstatement or omission in a prospectus, including a "free writing prospectus," used in an SEC-registered public offering, as well as in an offering document for a Rule 144A or other private offering or even an offering conducted outside the United States in reliance upon Regulation S. Liability can also be based upon a material misstatement or omission in any public statement (eg, a press release), or in any document submitted to the SEC, including periodic reports filed by a non-US issuer with the SEC under the Exchange Act.

Rule 10b-5 has been interpreted by courts to require a plaintiff to prove that the defendant:

- made an untrue statement of a material fact or omitted to state a material fact;
- with scienter;
- upon which the plaintiff reasonably relied;
- in connection with the purchase or sale of a security; and
- which proximately caused the plaintiff's damages.

Rule 10b-5 liability is generally more difficult to establish than liability under Section 11 or 12(a)(2) under the Securities Act, under which proof of scienter or reliance is not required.

Section 20(a)

Section 20(a) of the Exchange Act provides that any person who directly or indirectly controls any person liable under any provision of the Exchange Act or any rule thereunder will be liable to the same extent as such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. The Section 20(a) defense sets a lower standard of care for the controlling person than Section 15 of the Securities Act.

The purpose and nature of due diligence conducted in connection with an IPO

The due diligence investigation of the issuer is an important step in the process of preparing for an offering of securities in the United States. A due diligence investigation is ordinarily undertaken in conjunction with a securities offering for a number of business and legal reasons. It enables the lead underwriters to learn enough about the issuer to decide whether it is worthwhile to proceed with the transaction. Once this decision has been made, due diligence helps the underwriters to determine the structure, terms, prospectus disclosure and marketing strategy for the offering. Particularly in the case of a non-US issuer, the due diligence process also enables both the issuer and the underwriters and their respective legal and other advisors to identify business, legal or regulatory issues or special risk factors relating to the issuer or its business environment which may impact the offering or require special disclosure in the offering materials.

A second important reason for the due diligence investigation is that it enables the underwriters and certain other persons (though not the issuer) involved in the offering to raise a defense to liability under the liability provisions of the federal securities laws (including Sections 11 and 12 of the Securities Act and Section 10 of the Exchange Act), and may also provide a defense under certain state securities laws which have similar liability provisions. These defenses are discussed more fully above.

The due diligence investigation typically includes:

- interviews with the principal directors, officers, employees and controlling persons of the issuer, as well as its independent accountants;
- a comprehensive review of the corporate and financial records, material contracts and financial statements of such issuer;
- a review of public information sources and databases for information relating to the issuer and its affiliates; and
- in some instances, interviews with third parties (eg, important banks, customers or suppliers) and, as appropriate, governmental officials having knowledge about such company.

In all aspects of the investigation, the primary emphasis is on the business, properties, financial condition, results of operations and prospects of the issuer.

ADR programs

Many non-US issuers choose to issue equity securities in the United States in the form of American depositary receipts (ADRs). Each ADR represents a specified number of shares of a non-US issuer that have been deposited with a custodian for the depositary under the terms of a deposit agreement. The shares held pursuant to the depositary arrangement that are evidenced by ADRs are referred to as "depositary shares," "American depositary shares" or "global depositary shares" (which will be represented by "global depositary receipts").

An ADR is a receipt for specified securities held in accordance with the terms of a deposit agreement. The depositary shares that are held in accordance with such arrangements are themselves viewed as newly created securities separate and apart from the underlying shares of stock issued by the issuer. Form F-6 is the form generally used to register under the Securities Act depositary shares that are evidenced by ADRs.

6

The role of the investor relations firm

Ashley Ammon De Simone, Jeremy Peruski and Wen Lei Zheng, ICR, Inc

A strategic investor relations (IR) advisor should have first-hand capital markets experience. Pre and post-initial public offering (IPO), the IR partner should emphasize consistent information flow, conservative and measured growth strategies and organized investor interaction. These factors greatly impact the success of the IPO and the issuer's long-term performance in the capital markets.

Executive summary

Embarking on an initial public offering (IPO) is one of the most exciting events in a company's life cycle. It is also one that typically creates many questions and uncertainties about how best to proceed. Which is the right set of bankers? Should we do a "joint book" or "co-led" deal? Are we big enough to go public? How should the company be positioned? What financial model should we be presenting? What metrics do we want to present once we are public? Should we provide guidance and how should we do so? What information can we share with the bankers? Is this the same information that we can share with the research analysts? The list of questions goes on.

One critical question that issuers typically miss relates to what happens when the IPO concludes and the company's public life begins. When the IPO event is over and all of the "buzz" fades away, what is the company's long-term strategy to interface effectively with investors, to maintain appropriate visibility with Wall Street, to manage expectations in the market and, ultimately, to enhance shareholder value and mitigate shareholder litigation risk?

An experienced investor relations (IR) advisor – that is an advisor with significant capital markets experience and an unbiased perspective – is a critical asset to a company at this time. Such an advisor can help management to answer these questions based solely on management's interests. The advisor should be spearheading continuity in messages from the pre-IPO to post-IPO phase, long after the underwriting community has completed the transaction.

Decisions, decisions: weighing advice from many advisors

The issuer is surrounded by opinions during the IPO process. Venture capital and private equity professionals bring advice from the perspective of their equity investments. Board members have strong operational opinions, but may not have experience of interacting with investors directly. Equity research analysts must form an opinion on the company independent of the transaction itself and the investment bankers must do the best they can to execute a successful deal for the issuer client and for the investing client. The bankers must walk a critical and fine line.

Advice from all of these important voices surrounds, but each with its own perspective and motivation to best fill the role of investor, board member, analyst or banker.

All of this advice can make it difficult for the issuer to make basic communications decisions. These include the following:

- What growth rate should be shown to investors (which then dictates size and attractiveness of the investment)?
- What time horizon should be communicated when discussing future growth?
- What near-term thresholds should investors be told as future "goalposts," such as product approvals, pending new contracts, construction completion or M&A activity?
- What type of financial guidance should be given or promised?
- Which members of the management team should speak on behalf of the company?
- What sub-sector should be presented to investors?
- What peer comparables should be referenced from a valuation and operational perspective?

While companies spend days and weeks negotiating sentence content in the F-1 registration statement (which may have no impact on the success of the IPO or post-IPO performance), many of the most important decisions and evaluation criteria do not get the attention they deserve during the IPO process.

A strategic IR partner should help companies to focus on and effectively address the critical areas that are important to both the success of the IPO and the company's performance in the capital markets in the 12 to 24 months following the IPO. The bottom line is that properly managing expectations, beating and raising guidance, marketing and positioning the story to investors and analysts are all areas on which IR can have a positive impact. These areas will have a significant impact on long-term management credibility and valuation.

While many IPO issuers want the best bankers, auditors and legal counsel money can buy, they often hire public relations or promotional and marketing firms that do not understand the impact of communication on long-term valuation. The relative cost of engaging premium IR support during the IPO process is inconsequential compared to banking, accounting and legal fees – even though IR decisions can impact market capitalization and valuation by many millions of dollars.

The Chinese dilemma

Navigating the IPO process in the United States – from China – presents the issuer with a unique set of challenges. Working

with an IR advisor which is experienced and equipped to handle these challenges, and which provides a global support team with geographic and sector-based expertise, will help management to deftly navigate the complex process.

Just a few of the typical dilemmas that China-based issuers face include the following:

- Listing decisions – investors often want to know why a China-based company chooses to list in the United States as opposed to markets closer to home. Listing standards, brand, cost and valuation must be taken into consideration; each component has implications from an IR perspective.
- Auditor decisions – investors will judge an issuer based on the quality of its deal team. Auditor selection is crucial to that judgment, as are the protocol and location of the auditor staff. Additionally, once the IPO is successfully completed, the issuer must maintain its public company status going forward. This can be costly and time consuming, with four reporting cycles every year. It is imperative that decisions about auditor selection be made with an understanding of investor preference and concern, not just based on cost.
- Post-IPO time management – investors will meet the management team on the roadshow and will form expectations about who will be communicating with them post-IPO. An effective IR strategy should optimally organize the allocation of the chief executive officer's (CEO) and/or chief financial officer's (CFO) time, between interfacing with domestic and overseas investors and engaging in domestic daily operations. Companies based in China have a unique set of time-management and travel dilemmas, from hosting conference calls in different time zones to the expense and time drain of attending key industry events on different continents. These decisions on time management need to be made ahead of the IPO, so that expectations about post-pricing access can be managed with investors during the roadshow.
- Chairman involvement – Chinese companies must often transition the role of the original founder after the IPO, deciding whether this person remains active in business operations and responsible to the board and to investors or retreats to an inactive role. This decision carries considerable IR implications.

The issuer's choice of its IR team can add much or little value to the issues highlighted above. Ultimately, it is imperative that management make decisions with an understanding of investor preference, cost of capital and effective time management.

Where strategic IR should enhance the IPO process

From start to finish, important areas in which strategic IR can assist during the IPO process include:

- banking firm selection;
- organizational meeting preparation;
- analyst teach-in preparation;
- financial model formulation and explanation;
- roadshow preparation, including Q&A preparation;
- disclosure of business metrics and operational information;
- presentation training;
- digital media;
- creation of IR infrastructure;
- strategic IR services for the aftermarket; and
- assembly of a cohesive IR team, either in-house, outsourced or both.

Selection of underwriters

One of the most important decisions a private company will make is its selection of underwriters. ICR works with clients along several fronts during this stage of the IPO process. First, ICR leverages buy-side contacts to get up-to-date opinions on the banking firms being evaluated; then it conducts due diligence on the specific research analysts that will most likely cover the issuer once it is a public company.

Research analysts are not as active in the IPO process as they once were, but they can still make or break a deal and are critical to aftermarket support. As such, it is important that private companies carefully evaluate the research analysts from several perspectives. First, is the analyst enthusiastic about the story? We find it amazing when we hear about companies that have selected a given banking firm if they have either not met or come away with a lukewarm feeling after meeting the research analyst. It is the analyst, not the banker, who:

- performs the sales force teach-in to explain the story to the institutional sales force;
- creates a model of the company;
- takes questions from the buy side/sales force during the roadshow; and
- rolls out coverage post-IPO.

We have seen an emerging growth IPO fail to be successfully completed due to a combination of coverage by only a junior analyst at one bulge bracket firm and an experienced analyst who was lukewarm (at best) on the company's story from the other underwriter. We have seen other situations where research analysts have rolled out with "neutral" or even "sell" ratings, even though the stock was below the IPO price level – which is significant because the buy-side knows that sell-side analysts are privy to greater levels of information during the IPO process.

After courting research analysts, cultivating relationships over time and developing a good sense of which ones truly understand and appreciate a company's fundamental position, it is important to work with an IR advisor to conduct independent checks with the buy side. These will show which sell-side analysts the buy side uses as its primary calls in a given sector. An analyst may love a company and understand its position, but if no one on the buy side respects what the analyst has to say, this may influence whether to include the firm on the deal (or at a minimum how much economics the firm should receive to participate in the offering).

After conducting proper due diligence on all relevant factors in banker selection (ie, bankers, distribution capabilities, specialty sales forces and research capabilities), it is important to realize that all banking firms are not going to accept a role in the IPO just because they have told you all along that they love the company. You will find certain firms that will not "go to the right" of other firms on the cover of the prospectus; some firms will not take anything less than a book runner role; others will not take less than co-lead; some will not provide the top banker or research analyst on deals where they are not the lead manager; some will take a co-lead but need at least 35% economics to do so; and some will provide high-quality research and aftermarket support for as little as 1%.

The bottom line is that companies need to keep their options open, start from the far left of the cover and work towards the right. It is also increasingly common to see four or even five banks on the cover, even for deals for as little as $50 million. A strategic IR advisor that has participated in many IPOs, and knows the banking firms well, can help private companies evaluate how best to construct the cover and obtain top-notch research and after-market support for a relatively small investment.

Organizational meeting and analyst teach-ins

After the banking team is selected, companies need to prepare for the organizational meeting, followed shortly by the analyst teach-in. The organizational meeting will entail presentations from executives in charge of areas such as sales, marketing, services, R&D, business development, legal, human resources and finance as well as from the CEO.

An independent strategic IR adviser with significant IPO experience should be leveraged to help in the preparation for these very important meetings. The organizational meeting begins to set the tone for how the company will be positioned and is the first major event where the quality of management will be evaluated. Related to this, the sales pipeline, forecasting process and financial model related to revenue, net income, cash flow and growth rates are evaluated in detail, and significant opinions are formed after these presentations.

One of the important considerations in organizational meetings (and analyst teach-ins) is what information will be disclosed. Companies should be considering what kind of metrics competitors frequently disclose, what metrics are important in running the business and what metrics might be disclosed on a quarterly basis once public. A strategic IR advisor can help the management team make these decisions, which are important during the IPO process and critical in the post-IPO period.

It is important to keep in mind that investment banking firms are taking underwriting risks during the IPO and as such, information will be shared during the IPO process that will not necessarily be disclosed as a public company. Some information may be shared with the bankers that is not shared with the research analysts, and some information may be shared with both that will never be shared again. A strategic IR advisor is a good independent third party to review this information before presenting it to bankers and analysts that are evaluating the company and management with every piece of disclosure.

Further to the high level of scrutiny during these meetings, it is extremely important that companies do not slap together presentations a day or two before the organizational and analyst meetings. Bankers and analysts still need to participate in the commitment committee calls before investment banking firms are given the green light by their firms to underwrite an IPO. During our investment banking and research careers, we have walked away from deals during mid-stream

when companies have done a particularly poor job of presenting their company, sales process, adequate pipeline and underlying financial forecasts. While walking away from the IPO can be the most visible impact related to poor performance by management during this stage of the IPO process, there are other less than optimal outcomes, such as:

- bankers persuading companies to consider selling the company rather than pushing forward with an IPO; or
- advisors convincing the company to delay in favor of other IPOs in which management will present well.

While the organizational meeting can be a very friendly environment, companies need to take their preparation to the next level when it comes to the analyst teach-ins, which take place several weeks after the organizational meeting. The level of detail and metrics shared related to pipeline management, quarterly projections and business drivers is much greater in this meeting. It is the company's responsibility to get the research analysts excited about communicating the company's story to the rest of their constituencies, in addition to feeling comfortable with the financial model to which they must commit.

The financial model

A strategic IR advisor that has significant IPO experience as a banker, research and IR professional is an excellent advisor during this critical financial model presentation and communication stage. Management has a once-in-a-lifetime opportunity to set expectations. It is critical that management clearly articulates the details of what has driven historical results and what will drive revenue and expenses in the upcoming quarters/years.

A strategic IR advisor can work with management to help ensure that expectations are at the most desirable (and appropriately conservative) starting level. When presenting a financial model to bankers and analysts, companies often do not consider the appropriate level of cushion that is needed to raise estimates over time. For example, the "out year" is often the year from which valuations are determined, and companies often do not want to discount their expected growth rate materially from what they believe is achievable because of the associated valuation impact, bankers telling them they need to show a certain level of growth to be considered attractive to growth investors, pressure from venture capitalists or simply a lack of experience in the IPO process.

However, this can turn out to be a short-sighted decision if companies do not consider that with the exception of the IPO bubble period, what makes stocks perform over the long term is meeting/beating/raising estimates. When getting ready to present a quarterly financial model to analysts, a management team should ask itself whether it is ready to have the "out year" estimate raised a minimum of four times and potentially eight times before the year is completed.

We also see a significant divergence in terms of the kind of projections that management teams share with bankers and analysts. Some companies show ranges, other show point numbers – and those that do differ from showing the internal plan display the internal plan with a slight haircut, which management can use to makes investment decisions, or the equivalent of a "street plan". A strategic IR advisor can work with management on how best to present the financial forecast to reassure analysts that appropriate degrees of conservatism are built into the model and to ensure that management understands how to manage expectations appropriately as a public company. This is one of the most important steps during the entire IPO process and it has a significant impact on a company's post-IPO success and related ability to establish a track record.

In addition to doing a quality job in presenting the financial model, it is equally important that companies follow up with research analysts to see where they come out with their finished models. Did the analysts properly model the seasonality of revenue and expenses? Is there a tight range or a wide dispersion in the analyst estimates? The answers to these questions could convey negative messages to the market, which will impact valuation.

It is extremely important to stay on top of analyst estimates before the deal is filed and even more so after the initial filing, as companies close in on putting a price range on the cover and research analysts conduct their sales force teach-in. In a worst-case scenario, we are aware of a company that delayed its IPO by several months, completed a quarter in the meantime but failed to provide an adequate review of the finished quarter's results and the related impact on forward estimates. The outcome was that analysts rolled out with higher estimates than management was prepared to guide to in the first quarter after pricing. This led to a significant decline in stock price and a hit to management's credibility.

Roadshow preparation is of the highest importance

Once a company has filed its F-1 statement, it is time to turn attention toward the roadshow and infrastructure preparation. The strategic IR advisor can play an important role in roadshow presentation and Q&A preparation based on significant IPO experience and first-hand knowledge of what investors are focused on, what questions analysts ask and what kind of answers investors are looking to hear. With decades of industry experience and having participated in many IPOs, the ICR team is uniquely positioned to help prepare companies from a presentation, voiceover and Q&A perspective. A premium IR team is not a substitute for investment banking teams, but rather complements the underwriting and working group.

One of the frequent mistakes that we typically see is companies spending much too much time putting slides together. Slides are moved around, then moved back to the original position; new slides are put in and then taken out. The process continues for weeks, with less time being spent on what management is actually going to say.

Even more importantly, is management prepared to answer the difficult questions throughout the presentation? Many companies spend between 70% and 80% of their time "working slides" and only between 20% and 30% of the time working on their voiceover and Q&A.

We would advise companies to spend roughly 40% of their time on the slides, 30% on the voiceover and 30% on Q&A preparation. A company can have the best slide deck in the world, but if the voiceover does not make the story easy to understand, it will be lost on investors. In addition, great slides and a compelling voiceover will be equally ineffective if management is not prepared to answer effectively the laundry list of CEO/CFO questions that will come up. Investors have only 30 minutes to decide whether they want to participate in the IPO, and they are examining everything management says under a microscope as a result.

Presentation training

While the strategic IR team can help management to prepare to say the right things, a corporate communications team is also indispensable in helping management teams from a presentation training perspective. No matter how experienced management teams are, we have never seen a team not feel that it benefited from presentation training. While we recently participated on a pre-IPO panel ourselves, one of the other panelists, who was previously an investment banker and is currently a CFO of a public company, stated that he took presentation training and would advise that every company do the same.

Digital media

Another factor that companies should increasingly consider as part of their roadshow is the use of digital media. Descriptions of a product or a customer reference in a prospectus is one thing, but to see a customer on video sharing his or her experience with a product and the business benefits that he or she has generated as a result can be extremely powerful. Starting a presentation with a high-impact, 30 to 60-second overview of the company in digital media can deeply engage the audience; a strategic IR advisor can help to focus the message for investors.

ICR believes that the digital media component of the IPO is a major source of value for foreign companies listing in the US capital markets. This is especially the case for Chinese companies, which are often explaining their businesses to investors that have little understanding of China. Many of these same investors have deep sector knowledge, and this can lead to misunderstandings when assumptions are made about how a sector functions in China as opposed to in their home market.

An issuer's choice of IR advisor should take into consideration the advisor's digital media capabilities. ICR believes that it is imperative to ensure that digital media is written and created in a form consistent with the rest of company disclosure, and preferably by the same IR team.

IR infrastructure

At the same time as management is preparing the roadshow, it is important that the IR infrastructure be put in place to support the company once it is public. This is another area where the strategic IR advisor is involved. From a systems perspective, the strategic IR advisor should have access to essential data services for tracking analyst estimates, and obtaining equity research, competitor transcripts, shareholder information and market-making information, among others.

In addition, the company must ready the IR portion of its website, with the vast majority of companies deciding to outsource the management of the IR website to a third party such as Thomson or Shareholder. The strategic IR advisor should have special IPO packages, in addition to services such as Business Wire and PR Newswire, for press release distribution. The cost of all these services can range from a couple of thousand

dollars per month to over $10,000 per month; a strategic IR advisor should help the company minimize these costs while putting in place a "best practices" infrastructure.

A select checklist of key IR infrastructure items to cover in anticipation of the IPO would include:

- corporate website;
- IR website;
- conference call, webcast and press release vendor service agreements;
- email distribution list;
- US IR hotline;
- IR email inbox; and
- marketing documents (consistent with F-1 filing and not to be utilized until after the quiet period).

Working with a seasoned team of IR professionals with experience grounded in the capital markets can help ensure that your IR infrastructure is cohesive, comprehensive and in line with legal (including disclosure) requirements.

Strategic IR services

The issuer also needs to plan for a host of strategic IR support in advance of pricing. For example, one area that needs to be determined before the management team hits the road is how inbound phone calls will be handled. Who screens these calls? Who is authorized to speak to Wall Street professionals?

In addition, an IR plan should be put in place ahead of pricing that calendarizes post-quiet period marketing for at least 12 months following the IPO. Typical questions an issuer should ask include the following:

- What exact date does the quiet period end?
- How many days should the CEO/CFO be prepared to spend participating in investor conferences and non-deal road shows?
- Will there be a follow-on transaction and when?
- When does the lock-up expire and what is the expected activity around the time of the lock-up?
- How will the company handle requests for company visits?
- Who will the company target from the sell side for additional coverage?
- What about a self-imposed quiet period around earnings season – how does that work?

We have found that most management teams, especially those based in China, are surprised by the amount of time they spend speaking with potential analysts and investors following the IPO. We find it helps them immensely to organize a 12 to 18-month plan encompassing strategic areas such as marketing, potential fundraising, key investor conferences, analyst calls, earnings dates, self-imposed quiet periods and select industry events. We also urge clients to organize the days following their earnings announcements strictly to ensure that they use that time wisely, meeting with key equity analysts and investors. Many issuers new to market appreciate the advice of seasoned capital markets professionals in helping them plan these important hours following earnings season. In addition, the content communicated in these conversations will make or break a management team's reputation and credibility, so it is important that management works with advisors who deeply understand how to convey clear and consistent messages that manage expectations in line with prior IPO disclosure and earnings call data.

Management should be prepared for at least the following activities immediately after becoming a public company, within quiet period and disclosure boundaries, all of which a strategic IR advisory should provide:

- press release writing;
- earnings preparation, including script and Q&A practice;
- timely outreach to the most appropriate sell-side analyst group;
- consistent communication with the investor community across all disclosure channels;
- shareholder intelligence and an understanding of who is demanding time;
- creation and development of an exhaustive IR calendar; and
- maintenance of first-call estimates and analyst models.

In-house or outsourced?

One of the common questions many companies face as they prepare for an IPO is: "Should we have an internal person focused on IR or should we outsource the function?"

We believe that a company can have a very robust and effective IR effort either way, as long as the professionals involved share a deep understanding of the global capital markets.

Chinese issuers have often employed junior professionals with an administrative focus to handle the IR function in house. This can be a good solution as long as that in-house person has the use of an agency that will guide him or her with strong advice rooted in experience from the capital markets, and as long as the company's CFO

is ultimately responsible for all outside communications. Otherwise, IR becomes an administrative function with limited value, instead of a strategic and proactive function focused on value creation and risk mitigation.

Many companies find that dedicated in-house resources work well with outside advisors during the IPO stage, especially if the issuer anticipates having significant sell-side coverage and an overall high level of exposure after pricing.

ICR's team of former sell-side and buy-side analysts provides considerable insight on all important IR matters, and our services include all strategic and process related matters. In addition, ICR invests hundreds of thousands of dollars each year in data services to ensure that we can provide our clients with all of the tools necessary to run a top-notch IR program. Comparable experience would be impossible to hire internally at such a price, and that does not consider the cost savings realized as result of ICR's preferred vendor relationships and investments in data services.

Conclusion

The IPO is one of the most exciting events in a company's lifecycle and is an event that must be prepared for properly in order to serve as a foundation for long-term success. An experienced strategic IR advisor can add value and a unique, independent perspective throughout the IPO process. It is for these reasons that a majority of ICR's IPO clients begin their retainers prior to or around the time of banker selection.

About ICR, LLC

ICR is the ninth largest independent PR firm in the country and the number one ranked firm in the financial communications category, according to a 2010 O'Dwyer's survey. The firm specializes in investor relations, corporate and crisis communications and digital media. Established in 1998, ICR represents more than 275 primarily publicly listed companies and maintains offices in Norwalk (Conn), New York, Los Angeles, San Francisco, Boston and Beijing. ICR is one of the industry's fastest-growing consultancies and is consistently listed among the nation's top independent communications consulting firms.

ICR's Asia business has managed strategic and financial communications for companies operating in greater Asia, including mainland China, Hong Kong, Macau and Korea. The team services clients from a variety of sectors including healthcare, tech/media/telecommunications, consumer, restaurants, gaming, clean technology and industrials. ICR Asia's team structure ensures that clients receive a global group of experts based in the firm's Beijing headquarters, as well as in the United States, so that clients can effectively interface with their global investor base and receive 24/7 support. Clients often work with ICR team members in their native languages. With more IPO work than any other Asia-based IR team, ICR Asia uniquely understands the considerable challenges and demands placed on Asia-based companies with global investor bases and foreign disclosure requirements.

How can you advise on capital markets when you've never worked on Wall Street?

Managing the corporate brand for a public or soon-to-be public company requires in-depth business and industry knowledge, as well as an advanced understanding of the capital markets. With several dozen former sell-side analysts, portfolio managers and other Wall Street professionals, ICR is the only firm to combine first-hand, senior-level capital markets experience with traditional corporate communications and PR professionals.

We draw on decades of knowledge and relationships within each client's sector, and as a result, ICR is uniquely positioned to advise management teams and develop communications programs for each stage of the corporate lifecycle.

Learn how ICR has redefined the corporate and financial communications landscape at 203-682-8200 or visit www.ICRinc.com.

ICR Corporate Communications Redefined.

NEW YORK • CONNECTICUT • LOS ANGELES • BOSTON • SAN FRANCISCO • BEIJING

7

The role of the financial printer

Paul Leatherdale, RR Donnelley Roman Financial

RR Donnelley Roman Financial discusses the financial printing needs associated with NASDAQ listing by Chinese issuers in connection with a public offering in the United States.

In addition to attorneys, investment bankers and accountants, your financial printer is a vital partner in making your initial public offering (IPO) or American depository receipt (ADR) listing on NASDAQ move forward as quickly, smoothly and comfortably as possible. Your relationship with the financial printer then continues as you fulfill annual US disclosure requirements and access debt and equity capital to support your company's growth.

Your financial printer helps you create, manage, produce and distribute documents and regulatory filings in the style and formats necessary to satisfy US financial regulations and meet the information needs of your investors.

Financial printers have been actively involved with the NASDAQ listing of several Asian corporations including 21Vianet, Actions Semiconductor, AutoNavi, Baidu, China Medical, CNINSURE, Ctrip, eLong.com, Global Education & Technology, Infosys Technologies, Silicon Motion, The9, Sky-mobi, Tom Online and Vimicro - to name just a few.

How does a financial printer differ from a commercial printer?

Financial printing is a highly specialized activity and extends beyond the simple transfer of information to a page. The services offered by a financial printer are designed to meet the unique needs of the time-critical and rapidly changing financial community.

In addition to providing regulatory expertise, financial printers have extensive customer service capabilities and offer fully integrated and global resources that operate around the clock. These assets are highly flexible and allow financial printers to accommodate the special needs of the deal and the market quickly.

Several factors differentiate financial printers from commercial printers. Unlike commercial printers, financial printers excel at managing last-minute print capacity. In addition to complex deal management, they provide finance-specific document composition services and a suite of electronic tools to streamline the document creation and filing process. Their infrastructure is built to ensure the security and confidentiality of the documents at every phase of the production cycle. Their on-site composition and customer service teams provide a level of support and follow-through guaranteed to get the job done. Office space and conference facilities are also designed to maximize productivity without minimizing the client's comfort. Collectively, these resources work together seamlessly to ensure the accurate and timely delivery of the financial print project.

In general, financial printers create documents that come directly from the discussions and the due diligence information occurring between the company, investment bankers, legal teams and accountants. The documents are composed in real time and in the correct format required by the US Securities and Exchange Commission (SEC).

Worldwide scope is another important strength of the largest and most well-respected financial printers. Finance has no borders and the need for global scope is even more important with today's far-reaching transactions.

Knowledge of the SEC's technology requirements allows the financial printer to support the company's needs in this area as well. For example, the SEC requires that some elements of the deal be filed electronically using Electronic Data Gathering, Analysis and Retrieval (EDGAR). Specifically, this applies to much of the documentation related to IPO and ADR filings, along with subsequent annual and periodic reporting. Unlike commercial printers, financial printers are EDGAR experts and do not need to hire subcontractors to perform this critical task. The same holds true for eXtensible Business Reporting Language (XBRL), a new required method of transmitting financial data to the SEC. Full-service financial printers offer robust tools to prepare and deliver data in this new format.

Many leading financial printers offer extensive multilingual translation services to facilitate their clients' global project needs. They also accommodate comprehensive foreign-language typesetting to enable the creation of language-specific preliminary prospectuses. This service is essential if the company plans to list on two exchanges.

Bringing a deal to market requires a heightened level of security and confidentiality. Financial printers, familiar with the requirements in this area, have incorporated security measures into their multiple processes – including technical infrastructure, facilities and personnel. Various levels of third-party certification (under Statement on Auditing Standards 70) can provide the company with enhanced peace of mind that the financial

printer is continuously and properly protecting the project.

Bringing a deal to market is a time-compressed and often stressful activity. Financial printers are familiar with the demands of bringing a deal to fruition. As a result, their facilities are designed to accommodate the company's needs during this sensitive period. For example, the company's representatives will often spend extended periods of time at the financial printer amending the registration statement and revising, proofing and fine-tuning the preliminary prospectus. In key financial centers across the world, top financial printers provide technology-driven, staffed conference facilities that are available 24 hours a day, 365 days a year.

As illustrated by numerous examples, financial printers have a focused expertise that commercial printers simply do not have. Given the importance of transaction documents, companies need the expertise, added value, speed and comfort of a financial printer to complete their IPOs and related subsequent disclosure requirements.

Preparation of critical documents

The SEC requires a company to provide four main classes of document in order to complete its US filing. It also stipulates which documents are to be provided in print or electronic form. The four groups of filing document are:

- the registration statement;
- exhibit files to the registration statement to provide additional background information;
- the preliminary prospectus, which describes the company's story and outlines its value as an investment opportunity; and
- the final prospectus, which outlines final price information.

Only the preliminary and final prospectuses are provided in printed form; all others are filed with the SEC in paper and electronic form.

Over a period of rigorous due diligence and information verification, the company writes the registration statement and preliminary prospectus. The SEC must review these documents and the exhibits will usually undergo several rounds of revision. During this busy time, the financial printer works with the company to organize its content into the format required by the SEC and other regulatory institutions.

The financial printer is fully responsible for processing all requested changes to the registration statement until the final draft. In addition, its systems are designed to reflect changes instantaneously. Working in sync with their other electronic tools, financial printers facilitate the secure and timely delivery of documents to the company wherever it is based.

The tangible strengths of a financial printer are evident here as it works to print the preliminary prospectus and deliver it to the underwriting syndicate. For documents that need to be delivered electronically to the SEC, financial printers make them EDGAR suitable and submit them to the SEC on the company's behalf.

Electronic versions of documents that may need to be posted on a company's investor relations website are also provided by the financial printer. Financial printers with assets located in key financial districts (eg, Wall Street in New York or Hong Kong) can also accommodate the company's requests to deliver advanced printed and electronic copies to select audiences.

At the conclusion of the roadshow, the deal is priced. At this point, the company will return to its financial printer to prepare the final prospectus. During this time, the company and its team set a final offer price before its SEC 424B submission. Once the submission is confirmed, the financial printer will obtain approval to print the final prospectus and deliver it to the company's investors.

Financial printers are experts at providing the tools and resources necessary to complete finance projects. They handle all the deal's logistics, allowing the company to focus on generating the content required for the final deliverable. Financial printers are highly skilled at simplifying projects and cultivating a good relationship with them will make this challenging time far more manageable for the company.

Timeline for working with a financial printer

The company chooses a financial printer for its deal. This decision may be made with input from the company's investment bank and securities lawyers. They can often provide valuable insight based on their past deal experience and involvement with particular financial printers.

The timeline for working with a financial printer depends on how the company chooses to integrate with its electronic solutions. Specifically, many financial printers offer virtual data rooms that substantially reduce the cost and time associated with more traditional, paper-based forms of due diligence.

The financial printer should be a part of the work group that is assembled two to three months before the planned initial filing date. If the company elects to use a

virtual data room for the due diligence process, the relationship with the financial printer begins earlier. The work team typically includes the company's key representatives, lawyers, underwriters, accountants and advisors. Being involved from the start of the project allows the financial printer to become familiar with all aspects of the deal.

The financial printer assists the company's lawyers with the submission of a number of confidential filings to the SEC examiner. This is the first step of SEC documentation. Over a period of several months, the SEC will provide comments and several rounds of edits may be required before the initial public fiing via EDGAR with the SEC.

During this period, the company will spend extended time at the financial printer filing amendments to the registration statement and revising, proofing and fine tuning the registration statement.

Following the investor roadshow with the preliminary prospectus, the company goes back to the financial printer to complete the final prospectus and any electronic filing required by the SEC. The financial printer will then proceed to the final phase of the project – printing and distributing the final prospectus to interested parties locally and globally.

Compliance and disclosure requirement for US filings

When listing on NASDAQ, a company will be required to disclose information to its stakeholders regularly through a variety of SEC filings. Meeting many of these filing deadlines can be an administrative challenge. Nevertheless, these documents must be filed in a timely manner to avoid raising concerns with analysts, investors and the SEC. The financial printer works as a partner in this area, working to leverage its expertise and self-filing tools to ensure timely filings.

A number of Asian exchange-listed companies are now looking at the NASDAQ market as a secondary listing opportunity. Financial printers with globally integrated platforms and a strong presence in the specific market of origin (ie, Hong Kong and China) can minimize the duplication of necessary compliance-related reporting in this area.

Types of filings include the following:

- An extensive Form 20-F annual report must be filed within six months of the end of the company's fiscal year, with chief executive and/or chief financial officer certifications.
- Form 6-K detailing the company's financial condition should be filed promptly after each of the company's first three quarters.
- Changes of a material nature, including changes in financial outlook, corporate control or accountants, should be filed electronically in a Form 6-K report.
- Shareholder regulations require that Forms 3, 4 and 5 be filed to report the purchase or sale of stock by company insiders (eg, officers or directors).
- Additional disclosure documents to report significant changes in stock ownership should be filed on Schedules 13D and 13G.

Future relationship with the financial printer

The financial printer continues to play an essential role in many of the company's future activities. Most companies use the same financial printer for their annual compliance and future transaction needs.

For example, the company works with the financial printer when it:

- creates, produces and distributes the company's annual report to shareholders, often produced in a four-color process;
- prepares all materials related to the secondary offering of equity or debt, mergers, acquisitions, tender offers and real estate investment trusts – asset-backed securities that can be used throughout the life of the company are also covered; and
- wishes to optimize internal and external communications by using the financial printer's leading-edge technology solutions, including virtual data rooms and content management systems.

Using your financial printer for related projects reduces the time required for data collection and ensures that former project knowledge is properly applied. Therefore, the choice of financial printer is important.

Key criteria for selecting a financial printer

In order to support the project properly, in both the short and long term, a financial printer must illustrate expertise in several key areas, including:

- industry reputation;
- product knowledge;
- equipment;
- technology;
- customer service; and
- overall project management.

A financial printer that illustrates strength in these critical areas will ensure

that the project, regardless of size or geographical scope, is produced on time, on budget and to the highest standard.

Ability to adjust to a rapidly changing environment

The capital markets community is highly dynamic due to market fluctuations, regulatory changes and new technological innovations. A financial printer must have an infrastructure that can easily adapt to change without sacrificing customer service and deliverables. Fully integrated financial printers can invest in resources more quickly and effectively to ensure that their people, technology and equipment can meet market needs promptly.

Partnership, not just procurement

Bringing a capital markets deal to fruition is a complex and often stressful process. After a company has gone public, future mandatory compliance-based filings are also necessary. With financial print, printing is only one tangible element of the overall service. Equally important are the financial printer's knowledge of the industry, understanding of how the SEC works and proven deal management skills. These elements give the financial printer the long-term ability to anticipate the company's needs and to supply it with winning solutions.

Global strength and local execution

The world of finance has no defined borders. These days, a deal may need to reach constituents in multiple continents, time zones and languages. Only a financial printer with an internationally broad distribution network, powerful equipment accessible 24 hours a day and reliable customer service can support deals of international complexity.

A hard-working, locally based team is ultimately responsible for the execution of a global deal. For this reason it is important to choose a financial printer with strong local accommodations, including technology-oriented conferencing centers with on-site composition teams and printing capabilities. Local support matched with a global delivery platform guarantees that the deal – regardless of size or scope – will be executed on time.

Deal management supersedes document management

Bringing a deal to market involves numerous moving parts. These include a multi-person work team, hundreds of documents, countless rounds of text revisions and an awareness of SEC filing deadlines. A financial printer is familiar with the "art of the deal" and has designed robust workflows to ensure that it can smoothly manage the project. Reputable financial printers have dedicated deal managers assigned to coordinate all the details of the project, from start to finish. They are experts on form requirements for particular filing types and the necessary timelines needed to execute the deal. Their familiarity with their own resources, matched with the company's unique deal requirements, allows them to develop a workable project plan that will meet the company's overall objectives.

Single-source services

A financial printer that can offer the company single-point sourcing has multiple benefits. These services include:

- comprehensive composition and EDGAR;
- XBRL;
- virtual data rooms;
- translation;
- press capacity;
- mail and fulfillment services; and
- global distribution.

The benefits of using a single provider include:

- greater cost and time efficiencies;
- greater production control;
- increased opportunities to reuse content for future deals; and
- enhanced confidentiality.

Service reliability

One major factor in the deal's success is delivering it to the target audience on time. A financial printer's ability to provide an accurate and timely turnaround for the project is critical in this regard. The company should ensure that it asks prospective financial print partners for data on their delivery speed. This is a hallmark measure of a financial printer's core offering.

An accommodating work environment

To take a company public, the company's team will spend an extraordinary amount of time preparing content and managing text revisions. Deals are presented to the market based on a set schedule in order to maximize returns. To expedite the creation process, the work team will likely perform these services on-site at the financial printer's conference facilities. The financial printer's accommodations should include state-of-the-art conference room facilities with ample space for a large work team. Technological tools including high-speed internet connections, conference-ready phones, audio/video capabilities,

photocopying and projectors are standard offerings. Reference materials, concierge services, in-house dining and relaxation areas should also be available.

Embracing technology

The financial printer should use technology tools to streamline delivery of the project. Best practices in manufacturing concepts, analytical techniques, process management and standardized procedures can significantly increase production capacity, service consistency and delivery times. The financial printer may also be able to provide a suite of user-intuitive e-based tools to facilitate various elements of financial communications and filings. Asking the financial printer about its latest market innovations and technology budget will allow the company to determine whether it is a technology innovator in the industry.

EDGAR

The financial printer should have extensive expertise in hypertext mark-up language (HTML) filings via EDGAR, as this is preferable to the older American Standard Code for Information Interchange language (ASCII). In 2002 EDGAR became the mandated means of all international filings. HTML provides increased readability to the company's documents. These include font highlights, hyperlinks and graphics. It can also be easily and quickly uploaded to the investor relations website. The SEC has strict filing hours. For the initial set-up, the company should begin working with the financial printer in plenty of time to ensure a smooth transition to this technology.

Large financial printers also offer additional e-solutions including self-filing tools for frequent filings (Forms 3, 4 and 5 for share ownership and Form 6-K). The company should also ensure that the financial printer is well versed in new technology platforms with the SEC. For example, the SEC is now accepting XBRL. Also known as 'interactive data', XBRL is a standards-based method with which users can prepare, publish, exchange and analyze financial statements and the information they contain. The company's ability to streamline its processes depends on its financial printer's ability to support and implement new technologies. Before choosing a financial printer, the company should ensure that it can meet this need by asking for a list of clients that it has supported in this area.

Virtual data rooms

A financial printer should be able to offer the company virtual data room technology services to support the IPO process. A virtual data room provides the company with a highly secure environment in which to share confidential information among a geographically dispersed work team. It can help attract investors by giving them an easy platform on which to conduct due diligence and analysis. It can also assist the company's advisors and bankers with the electronic dissemination of information during the early stages of the deal. In addition to their vital security aspects, virtual data rooms:

- establish a single place of record for sensitive documents;
- eliminate email overloads; and
- remove delays associated with travel and expedited mail.

Overall, the strengths of virtual data rooms extend beyond the IPO stage. Their capabilities also apply to M&A projects.

Distribution to shareholders and investors

The financial printer should have hands-on accountability for all distribution. To facilitate the company's needs in relation to shareholder and investor communications, a financial printer must have multiple venues, both domestically and internationally. In addition to standard fulfillment and tracking capabilities, it should be knowledgeable of a region's unique mailing and shipping requirements. In today's environment, the financial printer should also offer a means of electronic document delivery. Its ability to offer a well-rounded suite of services, married with a global delivery platform, will ensure that the company's materials arrive in the right hands at the right time.

Conclusion

Financial printers are experts at providing integrated communication solutions for finance-related activity. In addition to a strong delivery platform upon which to execute the deal, the financial printer should provide industry expertise, dedicated customer service, innovative technology solutions and global printing capacity. Along with a commitment to excellence and customer dedication, these features will ensure that the company's project and needs are met efficiently.

Leaders in Communications Services

For more than 146 years, RR Donnelley has stood for integrity, strength and growth — supporting clients with innovative services as new regulations and governance standards raise the stakes for timely and accurate financial reporting.

We possess the industry's largest printing platform and efficiently leverage our experienced service team, globally-integrated typesetting system, translation services, Venue[SM] virtual dataroom and powerful E-solutions to deliver on time critical deals. We have successfully managed projects for the largest Global and US IPOs, including the US listings for GM, Visa, Renren, China Ming Yang Wind Power, Country Style Cooking Restaurant Chain, Youku.com, Giant Interactive, Melco PBL Entertainment (Macau), China Medical Technologies, China Telecom, China Petroleum & Chemical, Sohu.com, Nippon Telegraph & Telephone and Baidu.

Partnering with RR Donnelley helps simplify the most complex financial communications. Put our size, agility and industry leadership to work for you.

RR DONNELLEY
ROMAN FINANCIAL

24-hr Customer Service Tel: 852.2522.3803 • Tel: 852.2850.6000
asiafinancial.rrd.com • venue.rrd.com
E-mail: hongkong@rrd.com • hkroman@rrd.com

8

The role of the insurance broker

Murray Wood, Regina Chen and Tom Cain, Aon

Many of the insurance products available in the West are also now available in China, including directors' and officers' liability insurance (D&O). Over the last 10 years, clients have become increasingly more sophisticated in their purchasing decisions, partially driven by heightened claims activity and related increases in premiums – policy holders are paying more attention to the D&O product and its scope of coverage, rather than focusing on price alone. Today there are more D&O providers than ever, many lured to China with the hopes of new profits, giving broader choices for policy holders and helping to stimulate competition.

The risks associated with an initial public offering (IPO) – and thereafter, with being a public company – as well as the need to recruit talented individuals to the board and management make D&O insurance essential for every well-run company. D&O insurance plays an important role in protecting individuals and the corporate entity, as both a private and a publicly traded company. To maximize the effectiveness of this asset, a thoughtful process should be undertaken with an experienced, specialist D&O insurance broker, which can provide essential benchmarking information and negotiate state-of-the-art insurance coverage. The purchase of D&O insurance is an important step in a company's journey toward an IPO.

The role of D&O insurance

The vast majority of public companies purchase D&O insurance. Most pre-IPO companies purchase private-company D&O policies even before they go public, to provide insurance for the period during which they prepare to go public. Indeed, qualified board members routinely insist on a robust D&O insurance program prior to joining the board of directors of a public company, and increasingly before joining the board of a company planning an IPO. D&O insurance serves two general purposes. First, it protect directors and officers, whose personal assets may be exposed as a result of liabilities arising from the activities they undertake serving the company. Second, it helps to shift risk from the company's balance sheet, by having insurance cover the expenses related to defending directors, officers and the company itself against demands from third parties. "Insuring Agreement A" of a D&O policy – the so-called "A-side" – protects individuals in the event that a company is unable to reimburse defense and settlement expenses (non-indemnifiable losses). "Insuring Agreements B and C" – the B and C-sides – protect a company's balance sheet. The B-side pays the costs of indemnifying directors and officers for defense expenses and settlement amounts on behalf of a company. The C-side provides insurance coverage for a company's own defense and settlement obligations in connection with securities litigation. No self-insured retention (deductible) applies to the A-side of the policy, but a retention will apply to claims brought under the B and C-sides.

Personal protection for directors and officers

Directors and officers face personal liability in their roles serving the company. Liability can arise from a myriad of suitors seeking compensation for alleged wrongful acts, including:

- employment-related violations;
- misrepresentations in the registration statement (eg, under Section 11 of the Securities Act of 1933);
- selling shareholder violations (eg, under Section 12 of the Securities Act);
- control person violations (eg, under Section 15 of the Securities Act and/or Section 20 of the Securities and Exchange Act of 1934);
- misrepresentations in post-distribution filings (eg, under Section 10 of the Exchange Act);
- Sarbanes-Oxley violations;
- state and federal antitrust and trade regulation violations;
- state blue-sky law violations; and
- violations of the Foreign Corrupt Practices Act.

Companies would have tremendous trouble finding talented director and officer candidates if individuals bore liability without protection. The first level of protection comes from indemnification provided by the company for the liability that directors and officers face in their roles. Indemnification is provided for in the company bylaws and/or through individual indemnification agreements, subject to the laws of the state of incorporation.

The A-side of a D&O insurance policy steps in to protect the individuals when the company cannot indemnify them. As a result, D&O insurance provides the last line of defense for an individual's personal assets when the company is not there to protect them.

There are at least three scenarios where A-side coverage applies. The most common situation in which a company cannot indemnify directors or officers is when the company is insolvent – when there are no funds to pay the directors' and officers' costs of litigation defense, settlement and/or judgment. Other situations arise when a company is barred by law from indemnifying an individual or is otherwise prohibited as a consequence of narrow indemnification covenants within the company bylaws. Finally, a former director or officer might have difficulty obtaining indemnification following a change of control (M&A specific) at the company. Insurance coverage for such non-indemnifiable loss springs from the A-side of a D&O policy.

Every traditional D&O policy has A-side insurance built into it, but the limits of liability – the policy proceeds – are shared with the B and C-sides, which protect the

corporate balance sheet. In order to provide greater protection for directors and officers, consideration should be given to purchasing a separate, dedicated A-side policy as part of the D&O program. This structure is widely accepted in the United States. In China, the excess A-side concept is still in its infancy. However, as the market evolves, we expect to see more Chinese companies adopt this approach.

Properly negotiated, an A-side policy not only offers a dedicated limit of liability for individuals, but also offers broader coverage terms. Ideally, the A-side policy should have a "difference in conditions" (DIC) feature, which enables the policy to drop down and respond immediately to a claim situation when its terms are broader than the terms of the underlying A-side program. Such excess difference in condition A-side policies is the industry standard in the US market.

Balance-sheet protection for the company

Historically, the vast majority of D&O lawsuits have resulted in indemnifiable loss paid by the company (or its insurer). As a result, the B and C-sides of the D&O policy can be an important means of transferring risk from the balance sheet.

When the D&O insurance policy's coverage is triggered under the B and C-sides, the company first pays a self-insured retention (deductible). Thereafter, the insurance pays on behalf of the company for all loss covered by the terms of the policy. It is important to negotiate the lowest retention available to the company at the time the D&O insurance is placed. The lower the retention, the earlier the company gets the benefit of the insurance proceeds in its litigation. In most instances, the cost savings associated with a higher retention are outweighed by the potential benefit of tapping into the insurance proceeds, even in low-dollar nuisance cases.

How much D&O insurance is required?

In practice, the liability of a director is unlimited at law. There are no statutory mechanisms that serve to cap a director's liability. As a consequence, further analysis is required to arrive at an informed decision when selecting an appropriate level of insurance. By looking at trends in the size of securities class action settlements, a company can begin to estimate the damages it might face from a lawsuit. Among the 2,905 securities class actions filed since 1996, only eight cases have reached a final verdict in trial. The results were four wins for the defense and four wins for the plaintiffs (one was later overturned). The remaining securities class action cases were ultimately resolved by settlement (or remain open), with no verdict ever rendered by a judge or jury. A number of case-specific variables are involved in predicting the size of an actual settlement, which makes it impossible to foresee the settlement value of a hypothetical case before it has even been filed. Still, by analyzing a variety of types of data, it is possible to align the size of the D&O program with a company's unique tolerance for risk. The most important types of data relate to historical claims results and peer-purchasing behavior.

Claims frequency

According to Cornerstone Research's annual publication entitled "Securities Class Action Filings – 2010 Year in Review", there were 176 securities class action filings in 2010, up from 168 in the previous year. The average number of filings for the period of 1996 to 2009 was 202 (see Figure 1).

Settlement values

According to data compiled by Aon, there were 105 securities class action settlements in 2010. Six of these exceeded $100 million. The median settlement for 2010 was $10 million and the average was $28.15 million (not including those above $1 billion). According to the NERA study (Trends 2010 Year End Update), 68% of the settlements were for less than $20 million (see Figure 2).

Figure 1

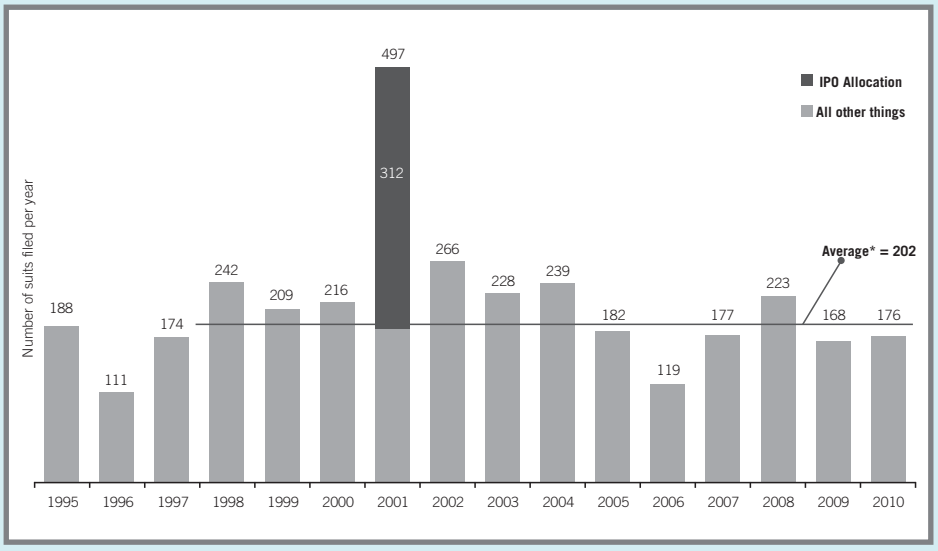
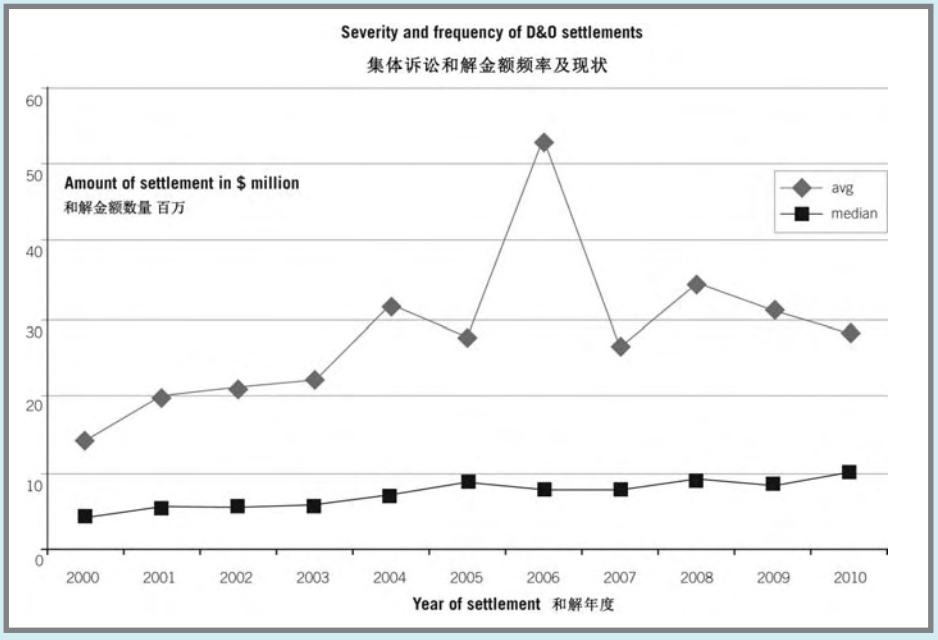


Figure 2



Securities claims against Chinese companies

As of March 2011, there have been 44 total securities class action cases against Chinese companies listed in the United States. The first claim against a Chinese company occurred in 2001. Figure 3 depicts the timing of these cases. The recent (2010) spike in claims activity has been directed primarily at companies that have listed in the US market via reverse mergers.

For Chinese companies listed in the United States, Aon's data shows that a total of 12 cases are related to an IPO and/or offering-related activities. Of these, nine cases were filed within the first year of the IPO/offering. Additionally, Aon found that additional defendant(s) in these offering-related cases included offering underwriters (11 cases), major shareholders (three cases) and controlling shareholders (one case).

Chinese settlements

The largest published settlement against a Chinese company was for $16 million, representing about 5% of the damages claimed. This settlement was announced in early 2010 and was related to an IPO of a company in the renewable energy sector. The second-largest published settlement was also for a company within the renewable energy sector – the settlement amount was $4.5 million and was announced in early 2010 (see Figure 4).

Historical claims data is only partly informative. A company must assess how the historical data might be relevant in light of the company's own risk profile. A number of analyses can help:

Figure 3

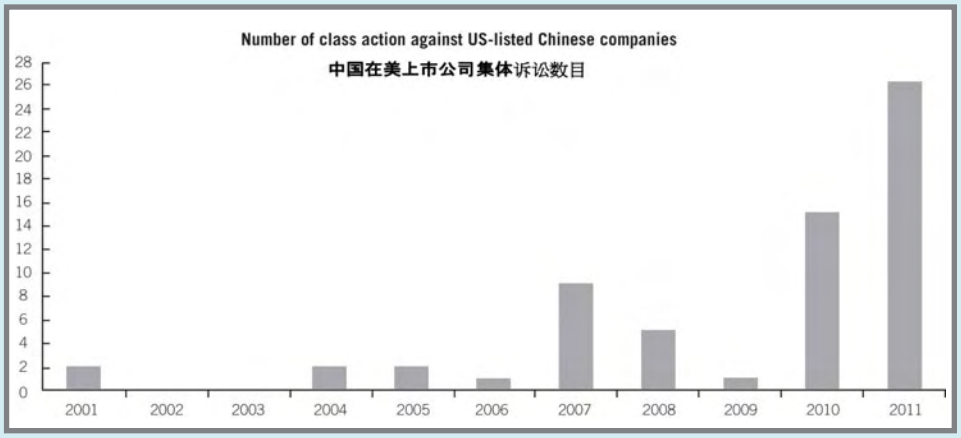
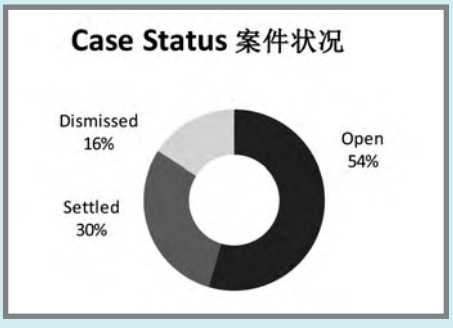


Figure 4



- the distribution of historical settlements based on expected market capitalization;
- the correlation between the size of hypothetical market cap drop and historical settlements; and
- the modeling of hypothetical stock volatility against the historical distribution of settlements for different sizes of investor loss.

Analyzing the company's risk profile against various types of claims data helps the company feel comfortable that it is purchasing a reasonable amount of D&O insurance based on its unique situation and tolerance for risk.

Peer data plays a central role in sizing a D&O program

Executives making D&O purchasing decisions find it informative to analyze what their peer companies are buying and how much they are paying for it. They use such information to reassure the board and management that their D&O program is at a level comparable to that of other companies in their market capitalization range and industry sector. Effective use of quality peer data can help a company to perform due diligence in deciding how to balance personal asset protection and corporate risk transfer.

Companies look at a number of peer-purchasing data points, including price, program structure, self-insured retentions and program size (ie, limits of liability). Assessing what is a proper peer first takes into consideration market capitalization (since the size of investor losses is a driving factor in calculating potential settlements). However, industry sector is a second consideration that can be instructive, since

it is often related to the likelihood of suit.

Chinese companies need to also consider who their peers really are. Are they only those US-listed companies which are based in China, or do their peers include all listed companies with similar characteristics (eg, industry, market capitalization or asset size)? A strong argument can be made in favor of the latter, using the basis that the attorneys making the claims are generally US-based, the investors bringing the claims are generally US-based and the applicable laws are US securities laws.

Unfortunately, peer data can be hard to come by, since companies are not required to include information regarding their D&O programs in their public filings. Several sources of D&O purchasing trends are available in the marketplace, but many suffer from obvious shortcomings. A qualified D&O insurance broker, in addition to outside counsel, can be helpful in providing confidential peer-purchasing information and in analyzing its applicability to a particular company. Aon produces real-time peer benchmarking reports using a variety of factors, including industry segment, market capitalization, asset size, revenue size and employee count.

Every company's D&O policy is an individually negotiated contract, which means that terms and conditions can vary widely. Thus, when benchmarking against peers, particularly on price, a company should not lose sight of the importance of the quality of the policy's terms and conditions. A cheap D&O program might not look like a bargain if the coverage is well below average. Benchmarking the coverage terms and conditions requires careful review by a D&O insurance broker and the company's attorneys.

The Chinese D&O market

Buyers in China are continuing to learn the mechanics of D&O insurance and the evolving marketplace. The first D&O policy written for a Chinese company occurred in 1996.

Today, some of the most recognized international D&O insurers have established a presence in China. There are a significant number of other international D&O insurers with operations in the regional insurance hubs of Singapore and Hong Kong.

Particular coverage issues faced by IPO companies

While the premium paid for insurance is certainly important, the scope of coverage should not be overlooked. In the event of a claim, the actual language of the policy will dictate whether there is coverage. There is no universal policy form used by all D&O insurers. Although every insurer begins with a similar base form, there are substantial differences that must be understood. The terms of every company's D&O policy can be negotiated, with numerous modifications added onto the base form in order to tailor the coverage.

Policy sections

Key sections of the D&O policy include the following:

- insuring agreements;
- definitions;
- exclusions (and exceptions to the exclusions); and
- general terms and conditions (eg, choice of counsel, process for providing notice of claim and mechanisms for bringing disputes against the carrier).

Modifications (ie, endorsements) can be made to any of these sections as part of the negotiation of a D&O policy. Sometimes insurers will make modifications that restrict the breadth of coverage and create an insurance policy less favorable to the insureds. On other occasions, through the work of an expert D&O broker, insurers will agree to modifications that make the policy much more favorable to the directors, officers and company. It is imperative, therefore, to leave sufficient time for a fully fledged negotiation to take place prior to the inception of the public company D&O policy.

In addition to the typical negotiations that occur when placing any D&O policy, IPO aspirant companies face several unique coverage issues. For example, many companies will have a private-company D&O policy in place before filing a registration statement. It is important that this policy does not have broad exclusionary terms that would bar coverage for the registration and trading of securities. The private-company policy must be designed to protect the directors and officers (and the company) for activities leading up to the trading date, particularly in the event that the IPO does not occur. At the point that the company begins trading, the public company D&O policy steps into place. Thus, the public-company D&O policy needs to be written so that there is no gap in coverage when the company goes public.

Prospectus liability insurance

One unique option that may be available to companies seeking to list is to purchase a separate D&O insurance policy that is dedicated solely to the risk associated with claims relating to the IPO and the related

registration document. This insurance is often referred to as "prospectus liability insurance" or "public offering of securities insurance" (POSI). The POSI policy is written on a multi-year basis and is non-cancellable by the insurer, eliminating the renewal risk that attaches to annual D&O insurance. Several key coverage extensions may be contained within the POSI policy (eg, it may also be extended to capture the indemnification obligation the listing company owes its offering underwriters and financial advisors). The POSI policy may also be extended to pick up an insured's controlling shareholders and selling shareholders. Finally, the POSI may be treated as an offering-related expense and receive favorable accounting treatment from the accountants. The interaction of POSI and D&O insurance is particularly important to get right and requires careful drafting of the respective contracts. The availability of such insurance depends on the current state of the insurance market (claims and premium trends) and the prevailing risk appetite of insurers.

A process-focused approach to securing D&O insurance

Mapping out an effective D&O strategy and timeline is critical to ensuring the placement of an effective D&O policy for an IPO company. The IPO process itself will put great demands on the management team, but getting state-of-the-art D&O coverage is important for recruiting and retaining board members. Effective D&O insurance could be the last defense against individuals losing their personal wealth in the event of a lawsuit.

Identify a strategy and establish a timeline early

Focus on developing the D&O placement strategy early by involving the insurance brokers well before the registration statement is filed. The broker and company should map out a timeline that maximizes the use of key executives' time for the D&O placement, carefully maneuvering around strategic dates associated with the IPO.

Present your company to the D&O insurers in a way that distinguishes you as a lower risk than your peers

The D&O brokers must take the company through an extensive risk-profiling exercise in order to understand how to market the D&O placement to the insurers. A comprehensive review of operational, financial and governance practices will ensure that the company distinguishes itself from the pack. D&O insurers reward companies that can demonstrate a lower risk profile. Companies that are in industry sectors considered higher risk by D&O insurers must take the time to demonstrate how they are different from their peers.

There will be greater choice in the insurers that participate in a D&O program after the company has presented itself as lower risk. Many insurers are willing to provide private and public company D&O insurance. Among other differences, these insurers offer variety in industry specialization, financial ratings and claims-handling reputation. Thus, companies should take the time to review with the D&O brokers the insurers that are best matched to them. A carefully planned process will ensure that there is sufficient time to consider these variables, despite the time constraints created by the process of going public.

Select a D&O insurance broker that will be a trusted adviser, managing your executive liability risk for years to come

The effective negotiation of a state-of-the-art D&O program requires a specialist broker well versed in the important nuances of this niche market. Companies should carefully assess their brokers to ensure that are getting the level of expertise required for this important area of insurance.

Key considerations when selecting a D&O broker include the following:

- Is the broker experienced in handling D&O insurance for both private and public companies?
- Does the broker use a consultative approach so that the company gets a trusted advisor on the topic of executive liability risk management?
- Has the broker outlined a clear and thorough process for the D&O negotiations which fits with the IPO's timing?
- What unique data can the broker provide to do meaningful benchmarking when determining the size and structure of the D&O program?
- Is the broker specialized in D&O insurance for IPO companies such that it has knowledge of the latest trends in the market?
- How large is the team of brokers dedicated to D&O insurance and how does that team keep itself apprised of market developments?
- Is the broker focused on providing claims advocacy and management that will be uniquely tailored to the company's needs in the event of a suit?
- Is the broker integrated into a global network that is accustomed to US business practices?

The insurance program negotiated by the D&O broker ahead of the IPO sets the tone for the company's D&O program for years to come. A state-of-the-art D&O program can mean the difference between having coverage in the event of a suit or being without meaningful insurance. Given the potential exposure of individual directors' and officers' personal assets, getting the D&O insurance wrong can have disastrous results. Perhaps no line of insurance is more important to an IPO company than D&O insurance. And having the right experts negotiating the program is a corporate imperative.

About Aon

Aon Company (NYSE: AON) is the leading global provider of risk management services, insurance and reinsurance brokerage, and human capital solutions and outsourcing. Through its more than 59,000 colleagues worldwide, Aon unites to deliver distinctive client value via innovative and effective risk management and workforce productivity solutions. Aon's industry-leading global resources and technical expertise are delivered locally in over 120 countries.

Aon in China

Aon operates in China through a joint venture known as Aon-COFCO Insurance Brokers Co, Ltd. Aon-COFCO was the first Sino-foreign licensed insurer in China and currently has more than 289 employees. Aon-COFCO conducts its operation from its headquarters in Shanghai and its branch offices in Beijing, Nanjing, Chengdu and Guangzhou. The joint venture is 50% owned by Aon and 50% owned by COFCO.

Awards

Named the world's best broker in *Euromoney* magazine's 2008, 2009 and 2010 insurance surveys, Aon also ranked highest on *Business Insurance*'s listing of the world's insurance brokers based on commercial retail, wholesale, reinsurance and personal lines brokerage revenues in 2008 and 2009. AM Best deemed Aon the number one insurance broker based on revenues in 2007, 2008 and 2009, and Aon was voted best insurance intermediary 2007-2010, best reinsurance intermediary 2006-2010, best captives manager 2009-2010 and best employee benefits consulting firm 2007-2009 by the readers of *Business Insurance*. Visit www.aon.com for more information on Aon and www.aon.com/unitedin2010 to learn about Aon's global partnership and shirt sponsorship with Manchester United football club.


AON
Aon is the world's leading provider of risk advice, insurance and reinsurance brokerage, and HR services
Please visit **aon.com** for more information.

Contributor profiles

Aon

Room 4201, Jin Mao Tower, 88 Century Boulevard, Shanghai 200121, China
Tel +86 21 3865 8000
Fax +86 21 5049 8331
www.aon-cofco.com.cn

Murray Wood

Regional managing director
murray.wood@aon.com

Murray Wood is a regional managing director of Aon's financial services and professions group, in charge of financial product for all of Asia. He has over 20 years' experience in the insurance industry and has been a broker of financial products since 1988. Mr Wood has been employed by Aon since 1991 in Sydney, London, Hong Kong and now Singapore. In 2006, he relocated to Hong Kong, assuming responsibility in Asia for Aon's financial services and professions practice. In 2011 Mr Wood relocated to Singapore, where his responsibilities continue to focus on South-East Asia.

Regina Chen

Regional director
regina.chen@aon.com

Regina Chen is the leader of the Hong Kong financial services and professions group and in 2011 she assumed the new role of regional director. Her focus is on greater China, covering Hong Kong, China and Taiwan. As part of this role, Ms Chen supports each of the countries with their client acquisition and retention strategies, market relationships, staff development, management reporting, and product and business development strategies. Ms Chen joined Aon's financial services and professions group in 1999. She started her insurance career in 1989.

Tom Cain

Regional director
tom.cain@aon_cofco.com.cn

Tom Cain joined Aon in 1999 and transferred to Aon-COFCO, Aon's China joint venture, in 2006 to aid in development of the directors and officers' liability insurance in the financial services and professions group. In 2011 Mr Cain took on the role of regional director for the group. Before China, he spent seven years working for Aon's financial services group in Boston, Massachusetts, servicing the management liability needs for a variety of clients from large publicly traded to small privately held entities. Prior to Aon, Mr Cain spent 13 years as an underwriter of management liability.

Citi

39th Floor Citibank Tower
Citibank Plaza, 3 Garden Road
Central, Hong Kong
Tel +852 2868 8888
www.transactionservices.citigroup.com

Valentina Chuang

Director
valentina.chuang@citi.com

Valentina Chuang is a director and is responsible for depositary receipts (DR) sales in the Asia Pacific region for Citi's Depositary Receipt Services. Ms Chuang joined Citi in Taipei in 1997 as product manager for securities services. In this position, she managed and provided securities-related services to top local fund management companies, DR issuers, qualified foreign institutional investors and public sector clients. Since 2004, Ms Chuang has taken a DR sales role and developed Citi's DR business in greater China. In 2008, she was appointed Greater China head for issuer services and was made responsible for business development of Citi's DR and Agency and Trust business in this region.

Before joining Citi, Ms Chuang worked for Jardine Fleming, where she was responsible for marketing and intermediaries sales of the fund management business. Ms Chuang graduated with a bachelor's in economics and an MBA from National Chengchi University in Taiwan.

Goldman Sachs (Asia) LLC

Cheung Kong Center, 68th Floor
2 Queen's Road Central
Hong Kong
Tel +852 2978 1000

Winland International Center, 18th Floor,
7 Finance Street,
Xicheng District, Beijing 100140
People's Republic of China
Tel +86 10 6627 3000

www.gs.com

ICR, Inc
441 Lexington Avenue, 4th Floor,
New York, NY 10017, United States
Tel +1 646 277 1200
Fax +1 646 277 1201
www.icrinc.com

Ashley Ammon De Simone
Managing director, co-head, ICR Asia
ashley.desimone@icrinc.com
Ashley De Simone co-heads the Asia business at ICR, leading a New York and Beijing-based team and servicing over 30 Asia-based clients, all of which have financial communications needs in the United States. Since joining ICR in 2003, she has designed capital markets communications strategies for many high-profile domestic and international issuers, and has built best-practices investor relations (IR) strategies for initial public offerings (IPOs), spin-offs, M&A transactions, crisis situations and institutional marketing efforts throughout the United States, Europe and Asia. Ms De Simone's IR work is rooted in her former career as an equity research analyst covering the marketing services and advertising sectors at ABN Amro and CIBC World Markets, now Oppenheimer. Since launching ICR's Asia business in 2006, her efforts to further the IR profession in China have been featured in Asia-based publications including *CFO World* magazine, as well as through hosting numerous educational events to educate issuers, including creating ICR's US IPO Bootcamp, as well as its "IR 101" in-house training program for in-house practitioners.

Ms De Simone graduated *magna cum laude* from the university professors program of Boston University and completed the general course in politics and economics from the London School of Economics. She held Series 63 and 7 licenses (now expired) while an equity research analyst.

Jeremy Peruski
Senior vice president, ICR Asia Beijing office
jeremy.peruski@icrinc.com
Jeremy Peruski has lived in China since 2004 and has in-depth financial experience from working in business development, investment banking and venture capital roles for several leading firms. Prior to ICR, Mr Peruski was a co-founder of Welkin Media – focused on consulting technology, media and telecomminications-related companies including Beijing Television, one of China's largest media companies, and LoongStore, one of China's first cloud computing companies. Earlier, he worked with Lenovo's corporate finance team in Beijing, where he was in charge of establishing and running its global business development team. In addition, as a member of the corporate finance team he was responsible for identifying, conducting due diligence on and negotiating with global M&A targets. Prior to moving to China, Mr Peruski worked for boutique investment bank Friedman, Billings, Ramsey & Co as a vice president in institutional sales for over six years. He graduated from Michigan State University and holds a master's in business administration from the George Washington University School of Business.

Wen Lei Zheng
Vice president, ICR Asia Beijing office
wenlei.zheng@icrinc.com
Wen Lei Zheng graduated with honors from the University of Wisconsin-Madison, triple majoring in finance, international business and East Asian studies. Prior to joining ICR in 2009, Ms Zheng worked in investment banking in the leveraged finance group of Merrill Lynch. Other previous experience includes working with the capital valuation group in valuing private companies, for Procter & Gamble in its global market research department and for UBS Financial Services in private wealth management. Ms Zheng is Series 7 and 63 certified, and is fluent in English and Mandarin, and proficient in French.

PricewaterhouseCoopers
22/F Prince's Building,
Central, Hong Kong
Tel +852 2289 8888
www.pwc.com

Laura Butler
Partner, Assurance, China
laura.butler@cn.pwc.com
Laura Butler has over 20 years' experience advising companies on US generally accepted accounting principles (GAAP), international financial reporting standards (IFRS) and Securities and Exchange Commission (SEC) technical matters in relation to their US initial public offerings (IPOs), private placements and ongoing registration requirements. She has spent the last 12 years working with companies based in China. Ms Butler leads North China's US Registrant Assurance Team of over 50 people and has extensive experience working with telecommunications, technology and media companies on complex accounting and reporting matters. She holds a US certified public accountant license and is currently based in Beijing, China.

Min Xiao
Partner, Assurance, China
min.xiao@cn.pwc.com
Min Xiao is a partner in the US Registrant Assurance Team specializing in US GAAP, SEC reporting and capital market transactions. For over 15 years, Ms Xiao has advised companies in the United States, Europe and Asia in connection with their US GAAP and IFRS conversion projects, cross-border IPOs and SEC registrations. In recent years, Ms Xiao has focused on working with companies in China and Hong Kong seeking capital market access in the United States. She is currently based in Shanghai, China.

Yulanda Tang
Senior manager, Assurance, China
yulanda.wm.tang@hk.pwc.com
Yulanda Tang is a senior manager in the US Registrant Assurance Team with over 10 years' experience of advising clients on US GAAP and SEC reporting requirements, in connection with their conversion projects, IPOs, private placements and M&A. Ms Tang specializes in the Internet, manufacturing and telecommunications sectors and also has experience in education and high-tech industries in China. Ms Tang is currently based in Hong Kong.

RR Donnelly Roman Financial
20th and 21st floors, Wheelock House,
20 Pedder Street, Central, Hong Kong
Tel +852 2522 3803
Fax +852 2524 2977
www.asiafinancial.rrd.com

Paul Leatherdale
Managing director, Asian sales
paul.leatherdale@rrd.com
Paul Leatherdale is the managing director of Asian sales for RR Donnelley. Currently based in Hong Kong, he first joined the company in 1987. Mr Leatherdale initially worked in RR Donnelley's London office from where he managed relationships with banking and legal clients. Within this role, he was responsible for the successful execution of numerous financial projects, including initial public offerings, mergers and acquisitions, debt transactions and many others. For the past 16 years, Mr Leatherdale has handled RR Donnelley's Asian sales effort from the Hong Kong office. Within this capacity, he focuses on equity, debt, M&A, annual reports, compliance, virtual data room and e-solutions opportunities throughout the Asia-Pacific region. Mr Leatherdale grew up in Japan in the 1970s and has 24 years' experience of living and working in Asia. He has a degree in business studies from London's Richmond College and is married with two children.

Simpson Thacher & Bartlett LLP
ICBC Tower, 35/F, 3 Garden Road,
Central Hong kong
Tel +852 2514 7660
Fax +1 212 455 2502
www.stblaw.com

Leiming Chen
Partner
chen@stblaw.com
Leiming Chen is a partner at Simpson Thacher & Bartlett LLP's Hong Kong Office, where he advises primarily on capital markets matters. He has worked on a variety of equity and debt offerings, including in the context of privatizations. Mr Chen's geographic focus is China and he has played a key role in executing some of the most significant privatizations and securities offerings by leading companies in China, including PetroChina, China Mobile, Bank of China (Hong Kong), Bank of China, China Telecom and China Ping An Insurance. He has also been involved in a number of important cross-border M&A transactions for Chinese companies, including China Mobile and PetroChina.

Mr Chen has been recognized as one of the leading capital markets lawyers in China/Hong Kong in a number of recent surveys, including *Euromoney's Guide to the World's Leading Capital Markets Lawyers*, *Chambers Global Guide to the World's Leading Lawyers for Business*, *Chambers Asia Guide to the Asia's Leading Lawyers*, *Asialaw Leading Lawyers* and *The Asia Pacific Legal 500*.

Mr Chen received his JD in 1994 from Osgoode Hall Law School, York University (Toronto, Canada) and graduated from Hangzhou Teachers College (Hangzhou, China) in 1981. He is fluent in Mandarin and Shanghaiese Chinese.

Daniel Fertig
Senior associate
dfertig@stblaw.com
Daniel Fertig is a senior corporate associate at Simpson Thacher & Bartlett LLP. Upon joining the firm in 2002, he completed a rotation in the New York credit and banking department before coming to Hong Kong in July 2003. Since then Mr Fertig has worked on a wide range of equity and debt securities offerings, as well as on a number of M&A transactions. He has represented

underwriters and issuers in a broad range of capital markets transactions including those involving Bona Film Group Limited, Home Inns & Hotels Management Inc, SouFun Holdings Limited, Focus Media Holding Limited, Shanda Games Limited, Chemspec International Limited, CNinsure, Alibaba.com Limited, Canadian Solar Inc, Chunghwa Picture Tubes Ltd, Chunghwa Telecom Co, Ltd, Ritek Corporation and LG Philips LCD. Mr Fertig has also worked on a number of M&A transactions, including Focus Media's acquisitions of Framedia, Target Media and Allyes Information, and private equity transactions.

Prior to becoming an attorney, Mr Fertig studied Chinese in Taiwan and Beijing, and worked as a translator for a number of organizations including the Beijing Foreign Languages Press and the Beijing office of a major US law firm. He is fluent in Mandarin.

Mr Fertig received his JD degree in 2002 from Columbia Law School and earned a BA from the University of Virginia in 1994 and an MA in Chinese from Columbia University in 1999.

Chris Lin

Partner

clin@stblaw.com

Chris Lin became a partner of Simpson Thacher & Bartlett LLP in 2001 and is currently a partner in the Hong Kong office. He joined the firm in 1992 after receiving a JD degree from Columbia Law School. Mr Lin is fluent in Mandarin Chinese and has actively participated in many corporate finance, M&A, direct investment and project finance transactions in the Greater China area. He was named one of the top 100 initial public offering IPO lawyers in 2004 by the *IPO Lawyer Yearbook*. His representative transactions include US Securities and Exchange Commission (SEC) registered offerings of equity securities of Sky-mobi, Bona Film, Le Gaga, Funtalk China, Ambow Education, Camelot Information, Charm Communications, China Lodging Group, Chemspec International and ATA Inc in China, and SEC-registered offerings of equity securities of AU Optronics Corp, ChipMOS Technologies, Chunghwa Telecom, GigaMedia, Siliconware Precision Industrial Limited and United Microelectronics Corporation in Taiwan.

Editors:
Jo Moore and Liz Rutherford-Johnson

Design:
Fran Lane

Production:
Nicky Phillips

Publications manager:
Harriet Marchant

Publisher:
Tim Dempsey

Printing and binding:
RR Donnelley Roman Financial

Going public: A guide for Chinese companies to listing on the US securities markets

is published by
Globe Business Publishing
New Hibernia House
Winchester Walk
London SE1 9AG
United Kingdom

Tel: +44 20 7234 0606
Fax: +44 20 7234 0808

First published 2006
ISBN 978-1-905783-60-1

编辑：
Jo Moore 及 Liz Rutherford-Johnson

设计：
Fran Lane

制作：
Nicky Phillips

出版经理：
Harriet Marchant

出版者：
Tim Dempsey

印刷及装订：
RR Donnelly Roman Financial

上市：中国企业在美国证券市场上市指南

由Globe Business Publishing发行
New Hibernia House
Winchester Walk
London SE1 9AG
United Kingdom

电话：44.20.7234.0606
传真：44.20.7234.0808

2006年第一次出版
ISBN 978-1-905783-60-1

上市

贵公司在美国证券市场上市，是企业家的重大成就。除足以自豪外，亦是业务发展的好机会，更是重大法律责任的承担。「上市」第二版是中国公司在美国证券市场上市的指南，当中载有参与安排上市的主要机构各种宝贵意见，确保读者了解所涉及的主要问题。当然，本指南仅能概括而论，不足以取代具体的法律或财务意见。

指南的内容乃假设贵公司正认真考虑上市，但可能未有目标证券市场，亦可能未决定哪一种上市形式最切合贵公司需要。

无论您的具体计划如何，「上市」均有助你了解美国证券交易委员会、其他美国监管机构、投资者及证券分析员对贵公司的要求。指南清楚说明在美国上市的各种手续，阐明最密切参与上市工作的机构职责，亦提供参考时间表，列出上市的各个步骤。

纳斯达克OMX集团希望本指南有助贵公司在美国证券市场上市，并祝贵公司业务蒸蒸日上。

Contents 目录

1

导言

纳斯达克股票市场®

纳斯达克®上市给中国公司提供了更高的视野，并可招揽全球各地更广阔的投资者。纳斯达克为公司、市场参与者及投资者提供环球其中一个最优质的市场，有助推动企业增长及企业管理。

2011中国企业在美国证券市场上市指南

公司在美国证券市场公募是一件大事，随之而来的是自豪感，业务增长的机会和重大的法律责任。在上市之前，建立和发展支持公共持有的公司所需的公司环境和基础架构不失为良策。这包括处理公司内部常规事务，诸如建立财务记录，制定和审核内部管理，审查公司规章制度和期权计划。

一家公司在上市之前应考虑制定和审查公司通讯政策，开发投资者和公共关系方案，保留与新的委托人沟通的资源。还有必要制定及时的年度和季度证券交易委员会(SEC)备案文件和重大信息披露的标准。

*《上市：中国公司在美国证券市场上市指南》*一书由其赞助人撰写，帮助公司协商复杂的首次公募(IPO)程序，涵盖了诸如此类的内容。该书阐述了上市的各种步骤，简述了在纳斯达克股票市场上市的益处，即纳斯达克OMX集团有限公司(The NASDAQ OMX Group, Inc.)的美国上市市场。高盛投资银行概述了投资银行在促进IPO中的角色，盛信律师事务所说明了需要考虑的法律问题。普华永道从会计角度看待问题，ICR对建立稳固的投资者关系方案提供了深度考察。花旗银行提供了有关存托凭证的信息。由AON来阐述保险的重要性。RR Donnelley讨论了制定和印刷证券交易委员会(SEC)文件所需的条件。我们希望这一指南提供的信息对寻求在美国股票市场上市的公司有帮助。

在纳斯达克股票市场上市 — 概述

纳斯达克OMX的使命是通过为公司，市场参与者和投资者提供世界上最高质量的股票市场，促进公司成长和提升企业家精神，这是一个快速，可靠，高度透明，流动性强的市场；一个具备优质交易效率的市场；一个具备法规监管和公司治理最高标准的市场。

纳斯达克OMX集团是世界上最广泛和最多样化的交易公司。它横跨六大洲提供交易，交易所技术和上市公司服务，以3,600多家公司的业绩名列世界主要证券市场的首位。纳斯达克OMX为全球范围的公司提供多种融资解决方案，包括其美国上市公司市场，纳斯达克股票市场，OMX Nordic 交易所(包括First North)。公司提供的交易跨多种资产类型，包括股票，衍生产品，债务，商品，结构化产品和交易所交易基金。纳斯达克OMX交易技术支持50多个国家内的70多家交易所，清算机构和中央证券托管机构的运营。OMX Nordic 交易所不是法人实体，是纳斯达克OMX集团在赫尔辛基，哥本哈根，斯德哥尔摩，冰岛，塔林，里加和维尔纽斯等地交易所提供的产品。欲了解纳斯达克OMX的更多信息，请访问：www.nasdaqomx.com。

纳斯达克股票市场，即纳斯达克OMX美国上市公司市场，有超过3,000家公司上市，总市场价值4,600亿美元。71%的经理人投票认为纳斯达克是具有创新的交易所。美国3大公司中的2家在纳斯达克上市。财富杂志选出的美国最受欢迎5家公司中的3家在纳斯达克上市。财富杂志中10家发展最快的公司中的7家在纳斯达克上市。纳斯达克是包括技术，零售，通讯，金融服务，交通，媒体和生物技术等各种业务领域的领袖企业的集中地。历年来，纳斯达克吸引的IPO比任何其他美国交易所都多。交易是通过一个复杂的计算机和电信网络执行，该网络系统为投资者传输及时，关键的交易信息。超过150家已注册做市商保荐纳斯达克公司和交易纳斯达克股票。纳斯达克全球精选(NASDAQ Global Select)和纳斯达克全球市场 (NASDAQ Global Market)公司平均有29家做市商，有多达75家做某些证券的已注册做市商。这一点是任何其他美国市场都无法匹敌的。

纳斯达克精选市场做市商程序(NASDAQ Select Market Maker Program)让上市公司更好地查看做市商在其股票交易所扮演的角色，让做市商行业同上市公司有更好的互动。纳斯达克精选市

场做市商程序创建了一个非凡的测量标准来帮助上市公司，交易员，机构投资者和个人投资者。

纳斯达克上市公司的专门服务

上市公司从纳斯达克在为进入资本市场的各个阶段提供有价值的独具特色的服务和信息程序的组合中受益。从一对一的个人联系到全面自动化的在线访问，上市公司有各种渠道可以获得并从中选择纳斯达克全资子公司和专有服务提供的服务和信息。纳斯达克OMX全球企业服务(NASDAQ OMX Corporate Services)也与多家战略联盟伙伴合作，提供上市公司需要的公司增值产品和服务。

纳斯达克OMX企业解决方案关注的是对任何上市公司都很关键的公司行为。作为第一家也是唯一一家拥有并且运营企业解决方案的交易所，纳斯达克OMX 为上市企业和私人企业提供可以促进企业交流的工具，包括投资者关系，企业支持和董事会支持工具。在了解了公司的需要后，纳斯达克OMX 公司服务开发了四个关注的重点领域：

- 情报
- 监管
- 沟通
- 可视性

智能解决方案

通过利用来自纳斯达克OMX的全套情报解决方案，您将永远不必担心错过任何一个工作上的宝贵机会。您可以利用强大的分析工具来监视市场，您以及您的同行的股票表现来支持您的内部和外部的工作流程。

关系经理

纳斯达克关系经理是纳斯达克上市公司可以获得的增值服务项目的一个组成部分。每家上市公司都会有一位长期联系人。他们都是对市场行情十分了解，非常有经验的专家。

市场情报服务台

是由市场专业人士组成的团队。他们均使用先进的技术向公司提供精确到分钟的市场智能，交易分析和实时信息。在纳斯达克上市就意味著您将有一个专门的MID主管随时准备向您提供任何时刻的市场交易信息。

纳斯达克企业情报

与Factset 相结合，可以提供范围最广的数据，可以根据您的工作流程来特别定制。这是一个简单易操作的产品。您可以在办公室或旅途中使用。

企业情报

整合了公共关系管理公司股东通讯，资本市场信息，和投资者关系等所需要的所有关键元素。

先进的情报

是一项前所未有的股票监管解决方案。它使您和您的管理团队时刻掌握您的股票实时交易活动。同时，您可以收到直接传送到收件箱的包括文字和图形格式的即时分析，包括一个对主要机构投资者权威性的五星级排名系统及由自定义交易限额自动生成的独家24/7「推拉」报告。

投资者分析工具

与资深股票监管分析师相结合，在通过公共发布，订阅和提供数据源的方式下为公司提供对机构活动，模式以及趋势的信息，来提醒任何重大股票变化。

纳斯达克在线

(www.nasdaq.net)，是您察看股票表现的综合窗口，是一种有效的战略性股权管理和决策工具。您可以利用纳斯达克在线来轻松管理您的投资者关系，了解自己的股票在市场的接受度，察看股票的交易情况，跟踪同行，和在任何特定时刻跟踪市场的活动。利用纳斯达克在线，报告和电子表格可以自动生成，从而使您和高层管理人员的沟通更加明确，翔实。

Morningstar联盟

是规模最大的独立投资研究中心。和Morningstar 的合作，使纳斯达克是美国第一家提供对所有上市公司包括有关股

值，定价，分析，和企业简介的免费研究报告的交易所。

Rivel 研究

为您的公司提供一系列的投资者情绪评估。每个月我们都会采访3个或者更多个重要投资者和其他利益相关者来理解他们是怎么察看和评估您的公司。采访得到的信息会和纳斯达克OMX的监控服务相结合来提供对您公司交易活动最全面的看法。

监管解决方案

如今的商业环境被波动的经济，更严格的审查，和不断增加的监管要求所影响。所有这些都为董事会增添了挑战和责任。

董事桌

是一套完整的交钥匙工程和全面托管的在线董事会管理解决方案。董事桌在提高董事会效率的同时最大程度地减少让董事了解最新消息所需的时间和文牍工作。

国家企业董事协会

通过和纳斯达克OMX合作，为董事会提供了在当今环境更加透明的情况下所需要的教育和服务。总之，我们通过让董事桌产品内的优秀内容和实惠的教育项目相结合的方法来为交易所和董事会提供更多的新项目。

举报热线

为员工及他人提供了一个事故报告的安全举报方法。保证您可以在没有任何人为干涉的情况下对事件作全面的报告。举报热线拥有可审查性，低成本效益，和易于使用的特点。同时，举报热线也符合萨班斯法案，安大略省证券委员会及加拿大证券管理规则中的审核委员会条例(多边文书52-110)。

Aon D&O 同行基准报告

提供了关于纳斯达克的上市公司购买D&O保险的方法，以及对保险业重要的课题和趋势的见解。Aon D&O 提供必要的尽职调查来保证您的团队在竞争中处于领先位置。

XBRL的归档解决方案

提供了一套强大的XBRL标记服务，以确保您的XBRL实例文档和标准季度和年度报告(10-Qs and 10-Ks)同时归档。通过使用专用XBRL翻译软件和技术来标记金融报表，您可以节省很多时间和金钱。

CRD分析解决方案

可以让您建立财务指标和制作投资分析报告和诊断，从而帮助您的公司管理风险和确定市场机会。

通讯解决方案

对于您的商业来说，如何去介绍商标和企业信息是最重要的几点之一。在这方面，纳斯达克全面信息服务会提供所有必要的工具，让您更容易和投资者，利益相关者，和金融界联系和交流。

GlobeNewswire

已经是全世界规模最大的新闻网络之一。在和Osaka Securities Exchange, 日本最大的衍生品交易所成为伙伴后，规模更加的扩大了。在拥有自助服务和编辑模式，SEO 优化，自订目标和 Edgar 提交服务的情况下，GlobeNewswire 是以一个既简单又有效率的方式直接给记者，分析师，新闻专线，编辑部，数据库，网站和商业人士传达您公司的新闻，盈利，公告，新闻稿，和媒体公告。

Webcenter 解决方案

是一个提供投资者关系和公共关系网站制作的一站式服务，有助于确保您所有的信息都展现在网络上。我们的网页开

发人员会与您的设计团队一起合作使您公司网站的外观和感觉互相匹配，维护品牌的延续性，和内容，特点和导航最大的灵活性。

交互式媒体解决方案

帮助你获取直播以及剪辑好的视频中的能量，从而将品牌推广升至一个全新的境界。将你的视频分享在投资者关系网站，社交媒体平台，以及会议等等场合，同时跟踪参与者的统计数据，可以使您的团队得知谁在访问您的信息。

打印和邮件分发解决方案

帮助您不用再为打印和分发费神。无论是投资者网站还是投资者会议发出的整理和运输材料要求，我们都可以处理所有的打印分发细节，同时提供全面的报告工具，并且保证您永远都有文件库存。

SocialStream

我们提供的一站式媒体解决方案是一个具有整合视频，产品演示，实时观众反馈以及多种功能的平台，帮助您的团队以及投资者关系网站创造出独特的，个性化的，多媒体体验。您可发布博客和新闻，视频以及任何的对外交流的信息，包含 Facebook 和 Twitter 的实时反馈，使您的客户能够及时得到您公司的新闻。

全球可视性的解决方案

公司通过利用每天给几百万的机构和个人投资者带来宝贵的，权威的信息的纳斯达克渠道来提高公司的可视性。

纳斯达克MarketSite

是坐落于时代广场的核心位置，也是新闻及各式活动的集散地。纳斯达克每天都会由世界知名的商业领袖主持市场的开盘与收盘。伴随著壮丽的景观以及终极的可视环境，纳斯达克交易所是一个最适合公司会议，商品发布，以及记者招待会的场所之一。

广告解决方案

帮助您将信息传递提高到更高的层面. NASDAQ.com 和 NASDAQ.net的网上宣传机会可以对您的品牌作更好的宣传。这两个网站有上千万的点击率，访问者都为了寻求深入的股票交易分析和报价。MarketSite的塔楼有七层楼之高以及75万的日浏览量，所以在MarketSite塔楼上打广告给客户提供了很好的户外广告体验。

总裁签名系列 通过纳斯达克Marketsite举办的高端网络访谈来帮助您联系其他投资团体。与经验丰富的金融记者进行面对面的访问让您的公司成为机构和个人投资者的焦点，以便于您远景，策略和新方案的讨论。

国际投资者项目

纳斯达克 OMX有多种项目和服务来增加投资者的利益，并提供论坛以便让国际投资者一对一地参与其中。纳斯达克上市公司可以使用这些国际项目和纳斯达克OMX机构投资者中心项目。

Phoenix-IR 路演项目

Phoenix-IR是欧洲最大的投资者关系咨询公司之一。为总市值达10亿美元以上的纳斯达克上市公司提供定制的欧洲路演服务。排名世界前二十位的最大的资产管理公司现在有一半设在欧洲，欧洲人在国际股票的投资组合方面有最高的比例。Phoenix-IR的定制路演服务在有效使用高级管理层时间的同时提供优质的人脉建设。

纳斯达克核心服务程序

为公司提供由纳斯达克OMX企业服务项目提供的免费服务组合。核心项目在无额外成本的前提下帮助公司将风险最小化，将效率最大化，提高透明度。想要查看和注册您想用的免费服务，请访问www.nasdaq.net。

纳斯达克上市步骤

公司要在纳斯达克股票市场上市，必须满足某些初始的定量和定性要求，并提交一份表格。这些要求列在本章节末的

表中。表格其他内容还包括关于公司在纳斯达克全球精选市场，纳斯达克全球市场或者纳斯达克资本市场首次上市的申请流程方面的基本步骤。

上市标准

选择其股票在纳斯达克股票市场上市的公司必须符合首次和继续上市财务方面的最低要求。这些要求为了促进全球范围内公司的融资，同时保护这些公司的投资者和潜在投资者。纳斯达克定量上市规定一般要求首次上市的起点比继续上市要高，从而有助于确保公司在上市之前达到了足够的成熟水平。纳斯达克还要求上市公司达到严格的公司治理标准，这些标准纳斯达克自己也要遵守。纳斯达克上市标准对公司和投资者同样透明，且要求严格执行。公司在www.nasdaqomx.com可以找到在线的上市申请表格。

在纳斯达克，我们相信您公司的上市应该给　贵公司以及股东带来实际价值，而不仅仅是一个在股票市场的「会员」身份。因此我们提供三个上市板块，增加公司的上市机会。实际上，纳斯达克的全球精选市场具有全世界最高的上市标准。超过1,000家纳斯达克上市公司满足纳斯达克全球精选市场的要求，创造了一个全球顶尖的交易市场。纳斯达克公司也满足和遵守这个市场的要求，从而树立了一流监管的榜样。

联系纳斯达克 OMX

欲了解关于在纳斯达克上市的战略优势方面的信息，我们欢迎公司联系纳斯达克OMX全球企业客户集团管理层。

Bruce Aust
执行副总裁，纳斯达克全球企业客户集团
+ 1 212 401 8746
bruce.aust@nasdaqomx.com

欲了解关于纳斯达克上市标准或申请程序方面的信息，请联系：

William Slattery
副总裁，纳斯达克上市资格部
+1 301 978 8088
william.slattery@nasdaqomx.com

Nelson Griggs
高级副总裁，纳斯达克全球企业客户集团
电话 +852 (2167) 1907
nelson.griggs@nasdaq.com

纳斯达克全球精选市场首次上市要求[1]				
要求	**标准一**	**标准二**	**标准三**	**标准四**
税前利润[2] （税前来自持续经营的收入）	前三个财年 总额≥1,100万美元 且 最近两个财年 每年≥ 220万美元 且 前三个财年每年≥0美元	不适用	不适用	不适用
现金流[3]	不适用	前三个财年 总额≥2,750万美元 且 前三个财年每年≥0美元	不适用	不适用
上市证券市值[4]	不适用	前12个月 均值≥5.5亿美元	前12个月均值≥8.5亿美元	$1.6亿美元
收入	不适用	前一个财年≥1.1亿美元	前一个财年≥9,000万美元	不适用
总资产[5]	不适用	不适用	不适用	最近完成的财年 达到8,000万美元
股东的股本[6]	不适用	不适用	不适用	5,500万美元
上市时开盘价[6]	$4	$4	$4	$4
做市商[7]	3或4	3或4	3或4	3或4
公司治理[8]	是	是	是	是

1. 这些要求适用于除封闭型管理投资公司之外的所有公司。封闭型管理投资公司，包括业务开发公司，不要求满足《市场规则》第5315(f)(3)的财务要求。如果发行者的普通股在纳斯达克全球精选市场上市，该发行者的任何其他证券，诸如有资格在纳斯达克全球市场上市的其他种类的普通股或优先股，也应在纳斯达克全球精选市场上市。如果公司的商业计划是完成首次公开募股，且在一定时期和一个或多个身份不明的公司进行合并和收购，根据IM-5101-2，这种公司是没有资格在全球精选市场上市的。
2. 按照《规则》第5315(f)(3)(A)条规定计算来自持续经营活动的所得税税前收入时，纳斯达克将依赖于发行者在最近的周期性报告和／或登记声明中向SEC提交的年度财务信息。如果发行者没有三年内公开的已报告财务数据，依据《规则》第5315(f)(3)(A)条其可取得资格的条件是如果其已经有：(1)其来自持续经营活动的所得税税前总收入至少1,100万美元，且；(2)每一个已报告财年中来自持续经营活动的所得税税前收入为正收入。少于三个月的财政期间不应视为一个财年，即使报告为发行者已公开报告的财务报表的汇报期末段。
3. 按照《规则》第5315(f)(3)(B)条规定计算现金流时，纳斯达克将依赖于发行者在最近的周期性报告和／或登记声明中向SEC提交的现金流量表中已报告的经营活动提供的现金净值，排除运营资本或经营资产或负债的变化。少于三个月的财政期间不应视为一个财年，即使报告为发行者已公开报告的财务报表的汇报期末段。
4. 倘若有首次公募的发行者上市，要符合《规则》第5315(f)(3)(B)和5315(f)(3)(C)条要求要看该公司在上市时的总市值而定。
5. 在根据《规则》第5315(f)(3)(D)条来计算总资产和股东权益时，纳斯达克将依赖于公司最近公开发表的根据《规则》第5310(j)条进行调整的财务报表。
6. 买入价要求不适用于在纳斯达克全球市场上市后又转板到纳斯达克全球精选市场的公司。
7. 符合《条例》5405(b)(1)或者5404(b)(2)的公司应有3个做市商。其他公司需要有4个做市商。电子通讯网络(ECN)不应视为做市商。
8. 除了以上定量条件外，公司必须根据《条例》5600系列来遵守所有企业监管要求。

纳斯达克全球市场首次上市标准[1]				
要求	**标准一 (利润标准上市规则)**	**标准二 (权益标准上市规则)**	**标准三 (市值标准上市规则)[2]**	**标准四 (总资产／总收入 标准上市规则)**
税前来自持续经营的利润 (在最近财年或最近三年财年的两年)	100万美元	不适用	不适用	不适用
股东权益	1,500万美元	3,000万美元	不适用	不适用
上市证券市值[3]	不适用	不适用	不适用	不适用
总资和总收入 (在最近财年或最近三年财年的两年)	不适用	不适用	不适用	7,500万美元 和 7,500万美元
公众持有股份[4]	110万	110万	110万	110万
公众持有股份市值	800万美元	1,800万美元	2,000万美元	2,000 万美元
上市时开盘价	4美元	4美元	4美元	4美元
股东(大宗持股人)[5]	400	400	400	400
做市商[6]	3	3	4	4
经营历史	不适用	2 年	不适用	不适用
公司治理[7]	是	是	是	是

1. 根据《规则》第5405(a)条和《规则》第5405(b)中至少一条规定，公司必须满足买入价，公共持有股份和大宗持股人要求。

2. 仅仅符合「标准三」上市证券市值要求的已上市公司(在另外一个市场已经上市或挂牌的公司)必须满足申请上市之前连续90个交易日期间的上市证券的市值和买入价要求。

3. 「上市证券」定义为「在纳斯达克或另外一家美国国内证券交易所上市的证券。」

4. 「公众持有股份」定义为在外发行总股份，减去官员，董事，和占有公司10%以上在外发行总股份的人，他们所直接或间接拥有的股份。公共持有股份没有官员，董事，和占有公司10%以上在外发行总股份的人所有的投票权或否决权，例如员工股票期权计划。

5. 大宗持股人股东是持有100股或以上股份的股东。

6. 电子通讯网络(ECN)不应视为做市商。

7. 除了以上定量条件外，公司必须根据《条例》5600系列来遵守所有企业监管要求。

纳斯达克资本市场首次上市标准[1]			
要求	**标准一 权益标准上市准则**	**标准二 上市证券市值标准 上市准则[2]**	**标准三 (总资产／总收入标准 上市规则)**
股东权益	500万美元	400万美元	400万美元
公众持有股份市值	1,500万美元	1,500万美元	500万美元
经营历史	2年	不适用	不适用
上市证券市值[3]	不适用	5,000万美元	不适用
来自持续经营的净利润 (在最近财年或最近三个财年中的 两年)	不适用	不适用	75万美元
上市时开盘价	4美元	4美元	4美元
公众持有股份[4]	100万	100万	100万
股东(大宗持股人)[5]	300	300	300
做市商[6]	3	3	3
公司治理[7]	是	是	是

1. 根据《规则》第5505(a)条和《规则》第5505(b)中至少一条规定，公司必须满足买入价，公共持有股份，大宗持股人和做市商要求。

2. 仅仅符合「标准二」上市证券市值要求的已上市公司(在另外一个市场已经上市或挂牌的公司)必须满足申请上市之前连续90个交易日期间的上市证券的市值和买入价要求。

3. 「上市证券」定义为「在纳斯达克或另外一家美国国内证券交易所上市的证券。」

4. 「公众持有股份」定义为在外发行总股份，减去官员，董事，和占有公司10%以上在外发行总股份的人，他们所直接或间接拥有的股份。如果发行美国存托凭证，至少要发40万股。公共持有股份没有官员，董事，和占有公司10%以上在外发行总股份的人所有的投票权或否决权，例如员工股票期权计划。

5. 大宗持股人股东是持有100股或以上股份的股东。

6. 电子通讯网络(ECN)不应视为做市商。

7. 除了以上定量条件外，公司必须根据《条例》5600系列来遵守所有企业监管要求。

梦想与行动

仿佛没有关联

没有行动的梦想会慢慢枯萎

没有梦想的行动缺乏创新

只有当梦想付诸于行动，才会有伟大的创造

医学的突破，科技的革命

一个全新世界的诞生

纳斯达克OMX将致力于与您携手并肩，实现理想

为此，每一天，我们都努力为世界提供最具创新的想法和最与

众不同的实践方式

想让您的梦想成为现实吗？

请和纳斯达克OMX一起行动起来！

NASDAQ OMX® Dream it. Do it.℠

2

投资银行的角色

高盛(亚洲)有限责任公司

首次公开发售是公司经营年期中带来焕然一新转变的事件，为其持续增长与发展奠定基础。投资银行在首次公开发售中地位举足轻重，并参与过程中各个阶段。

首次公开发行(IPO)是企业发展过程中的里程碑事件，为其持续增长和发展奠定基础。在IPO过程中，投资银行扮演著关键的角色，参与这个过程的每一个阶段，包括从组织「启动」会议到股票首日上市交易及后市表现。投资银行在IPO中的主要职责包括：

- 全面负责交易的执行与成功
- 协调文件的编制与准备工作
- 确定最佳发行结构
- 协助确定适当估值
- 为企业准备好向市场传递的股票故事

在许多方面，投资银行充当交易领导者的角色，提供战略支持和指导，同时确保参与各方的良好协调并共同致力于实现企业的上市目标。

为什么要IPO？

在着手进行IPO之前，企业应该仔细考虑成为上市公司的理由，因为这个过程很耗时，要求管理层投入大量的时间和精力。

为未来发展筹集资金

IPO将给予企业从各类投资者筹集大量新资本的机会，为未来发展提供资金。重要的是，IPO还将作为企业未来的融资平台，通过股票的二次发行和发债来筹集资金。

提供流动性和为在未来投资者减持创建一个承接市场

IPO将允许上市前或管理层股东以一种透明、有组织的方式将其股权变现。成功的IPO还将为投资者未来的进一步减持创建一个承接市场。

为战略计划创建一个有吸引力的收购货币

上市后，发行人可以把股票当作货币，用于收购或其它战略计划，提供了一个新的资金来源。

启动员工激励计划

有了公开上市交易的股票，企业就能够在向员工授予股票期权和其它股权激励时具有价值透明度，成为一个将员工利益和企业利益结合起来的有用工具，并使其能够投身于企业的持续发展与成功。

打造品牌的机会

进行IPO将把本企业介绍给全球的投资者，营造一个品牌「事件」，从而大大提升企业的公众形象。IPO很可能会得到主流媒体和商业出版物的报道，进一步提高公司在潜在合作伙伴和客户中知名度。

为什么要在美国进行IPO？

选择在美国上市的中国企业越来越多。去年是中国企业赴美IPO创纪录的一年，有38家企业选择在美国交易所上市，融资总额超过40亿美元。美国IPO能够为中国企业提供一系列的独特优势。

进入全世界最大的投资者资金池

美国投资者基础全球最大，有大量资金池可供投资，投资者类型和投资风格广泛。美国上市将为未来融资提高更大的灵活性，并有助于企业投资者类型的多元化。

加入世界级行业领军企业的行列

美国上市将使企业能够将其与在美国交易所上市的全球大企业进行比较。美国上市将使投资者更易于参照这些行业领军企业的股票故事和估值，而不仅仅是地区级的企业和可比公司。

增强透明度和信息披露

美国信息披露和内部控制框架全世界最全面，成为美国上市公司将激发投资者对企业坚持公司治理和信息披露最高标

准的信心，并使其信誉和声望进一步提高。

什么时候是进行IPO的适当时机？

决定进行IPO的过程中有一项同样重要的考虑，就是在公司的发展周期中择机上市。在IPO存在一些技术性要求(参见上一章)的同时，下列因素对于IPO的成功同样关键。

全面、可行的企业战略

IPO过程中的一个重要部分将是向投资者展示一个全面的企业战略，勾画出增长和盈利的关键指标，并能够提升企业的长期竞争地位。此等战略应明确而简单地传达给投资者。

建立了良好的经营业绩记录

企业应能够表现出强劲的经营业绩记录。

市场条件

尽管涉及公司自身的考虑因素在IPO过程中最为重要，但市场条件也可能有影响。例如，行业趋势可能影响投资者对企业的评估，同时股市和宏观经济情况可能影响投资者对新股的胃口以及对后市表现构成潜在影响。

投资(银行)将能够帮助企业分析上述每一项考虑因素，并帮助建立一个成为美国上市公司的路线图。

IPO准备

上市决定一旦作出，企业应开始IPO的准备工作。准备阶段的目标应为给出深受投资者欢迎的企业定位，并在准备成为上市公司的过程中采用「最佳实践」。

企业展示

准备IPO的一项重要因素是确保投资者能够对业务和管理层执行业务计划的能力进行正确的评价。

企业应能够展示一系列的财务报表和信息披露，准确反映业务、财务状况、财务状况的变化和经营业绩，包括如下内容：

- 关键业绩指标和经营业绩的推动因素
- 业务的增长轨迹和增长来源
- 成本结构背后适当的具体情况
- 代表企业真正盈利水平的利润率(或预期的利润率提升)
- 现金、债务和流动资金方面的财务状况
- 主要的资本投资支出要求
- 趋势和不确定性

此外，向市场展示一个「乾净的」企业形象将很重要，包括：

- 没有悬而未决的问题(如管理人员变动、诉讼)
- 报告和合规制度已经到位

管理团队的关键成员要到位，包括：

- 业务相关 — 包括首席执行官、首席财务官和总法律顾问
- 财务相关 — 包括具有美国通用会计准则和美国证券交易委员会(SEC)报告经验的会计团队市场相关 — 包括投资者关系和内部审计

公司治理和内部制度

企业还应确保建立了适当的基本结构，不仅是为了达到上市要求，而且是为了应对作为上市公司所增加的审查和披露要求。

建立具备适当公司治理结构的董事会将是IPO的关键优先事项：

- 独立董事应在IPO的时候到位(而且在理想的情况下独立董事最终成为董事会的大多数)
- 投资者将重点关注董事会是否具有独立性
- 上市筹备期是解决治理和股东保护问题的最佳时间
- 建立必要的「最佳实践」委员会，仔

细考虑审计委员会、薪酬委员会和公司治理及提名委员会的组成
- 实施必要的最佳实践政策，如道德准则、内幕交易政策和信息披露控制及程序
- 除了治理以外，企业还应注意其基本结构的具体细节，包括：

    - 建立内部审计和监管／合规团队及职能部门
    - 实行相应的管理和报告制度
    - 达到扩建技术要求
    - 拥有能够按时和准确处理账目和履行萨班斯-奥克斯利法所规定义务的财务和会计团队

承销商选择

企业在IPO过程中要作出的最重要决定之一，就是为股票发行选择一家承销商。选择投行时，企业应考虑如下标准。

经验／业绩记录

投行是否具有足够的经验牵头经办IPO？投行在中资发行人赴美上市方面的业绩记录如何？一家经验丰富的投行能够帮助企业在整个的过程中识别和找出潜在的障碍，从而确保交易的顺利执行。

声誉

投行在市场中的声誉如何？一家顶级投行能够有助于IPO获得更大的市场关注，而且在市场推介中能够进一步增强企业的信誉度。

投资者获取／分销能力

投行是否能够获得最大的投资者和／或行业中的主要投资者？销售团队的经验丰富程度如何？销售团队在那家特定的投行工作了多长时间？销售团队的组成是按区域、行业还是产品？一个全力以赴、经验丰富的销售团队，是确保企业IPO能够发掘所有潜在需求的关键。

估值观点

投行对企业的潜在估值有何看法？企业应该对投行对其业务、行业基本面和增长战略的了解程度作出评估，以确保投行能够对企业作出恰当的市场定位。此外，投行应能阐明投资界将用于评估目标公司的估值方式和方法。

全球平台

投行在企业是否拥有足够的现场人员来主导每日的项目执行并真正了解本地的行业动态？投行是否能够利用全球一流的专长？鉴于中资发行人赴美上市过程的跨境性质，以及全球市场的关联程度越来越高，投行能够提供跨地区的资源调度、关系网络和新思路十分重要。

全方位服务能力

除了IPO以外，投行是否能在未来的股权和债务融资或并购交易方面为企业提供顾问服务？投行能否为企业未来的计划提供战略、行业或监管咨询？IPO将成为企业与投行建立长期持久关系的基础。因此，选择一家具有广泛专长和能力的投行很重要。

IPO的启动

组织会议

组织会议标志著IPO的正式启动，旨在汇聚各方专业人员(即投行、律所和会计师)对发行的细节、主要分工和职责、IPO时间表和任何的初步事项进行评估。

会议通常在企业的总部举行。承销商将准备一份启动材料，其中包括发行细节和各工作小组的主要联系人。

尽职调查

IPO过程的第一个主要阶段是尽职调查，主要目标是使企业的顾问对企业进行全面、透彻的了解，并帮助企业确保发行文件囊括了IPO所需的所有重要资料。

尽职调查是一个持续的过程，期间各方专业人员可能：

- 对企业和／或设施进行实地考察
- 对企业高管和管理人员进行访谈
- 对主要客户和供应商做调查
- 对重大客户及供应商合同、董事会、股东和委员会决议及会议纪

要、牌照和许可、诉讼事项及雇佣合同等文件进行法律评估
- 调取企业的历史和预测财务数据

注册声明和SEC审查过程

每一家想在美国IPO上市的企业必须向SEC递交一份注册声明。假设中国企业是一家外国私营发行人(按照美国《证券法》的界定),递交注册声明将采用F-1表。进行首次注册的外国私营发行人可以享有向SEC秘密递交注册声明的好处,直至其选择公开递交注册声明。

注册声明是一份信息披露文件,必须包括SEC对于IPO所要求的所有信息披露,以及与企业有关的其它所有重要信息,以便投资者在知情的情况下做出投资决定。SEC审查过程是为了确保注册声明所含信息的完整性(包含所有的重大信息披露)以及语言的简洁明了。企业在SEC宣布注册声明「有效」之前不得销售任何证券。

起草过程

通过尽职调查过程以及向管理层了解更多信息的会议,承销商和法律顾问将收集注册声明所需的相关资料。

企业的法律顾问通常会在一系列的「起草会议」中牵头起草为注册声明准备的企业信息披露文件。

承销商和其他各方专业机构将为信息披露提供重要的信息,尤其包括承销商对企业的优势、战略和所在行业的看法。

一般而言,根据企业及其财务报表的复杂程度,完成向SEC首次秘密递交注册声明将需要六周至八周的时间;不过,根据审计情况,需要的时间可能会更长。

注册声明必须包含如下各个章节和/或信息:

- 业务 — 包括:
  - 公司介绍,包括主要产品及服务、业务优势及策略、营销策略及客户、生产流程、研发、设施、员工等
  - 行业概述及趋势(有时为一个单独的章节或包括在业务章节中)
  - 发行概要
  - 发行的资金用途
- 财务报表 — 包括:
  - 过去3个财年的经审计的财务报表
  - 过去5个财年的部分财务数据
  - 本年度的中期财务资料,取决于发行的时间
  - 某些模拟财务报表(如适用),例如有关(达到)特定门槛的近期并购
- 财务状况的管理层讨论与分析和经营业绩 — 包括:
  - 过去3年和中期财务数据实际表现的年度比较
  - 目前和预期的未来业务趋势
  - 某些业务的成败情况
  - 资本和支出需求
  - 预计资金来源
  - 与业务相关或有重要影响的任何其它趋势
- 管理层和公司治理 — 包括:
  - 董事会概述
  - 董事会委员会结构
  - 企业高管的薪酬披露(外国私营发行人可能会大为简化)
  - 股权结构和企业高管及董事会成员的任何实益权益
  - 风险因素
- 其他 — 包括:
  - 企业结构
  - 关联交易
  - 资本结构
  - 主要股东
  - 监管

SEC审查过程

注册声明起草完毕之后,企业向SEC首次秘密递交注册声明,开始审查过程。对于外国私营发行人,注册声明将不会

被公开，直至企业决定公开递交 — 通常是在SEC的所有重大意见均得到解决之后，才会进行公开递交，并向公众公开。

SEC审查过程主要集中于披露包含了所需信息以及语言的简洁明了，尤其是业务和财务信息披露方面。此外，SEC可能会关注「低价售股」问题，以及检查企业向员工及IPO之前的其他股东（如风投公司和财务投资者）发行的股票是否进行了适当估值。首次秘密递交注册声明之后，SEC通常需要30天左右的时间对文件进行审查，然后以信函形式提供评论和修改意见。

企业及其顾问将审阅SEC意见，对注册声明做出相应的修改，并向SEC递交陈述企业对SEC意见所作回应的回复函以及修改后的注册声明。通常，会有多次的秘密递交和SEC意见反馈，取决于企业及其财务报表的复杂程度。

一旦企业及其顾问确信SEC不会有更多的重大意见，企业可公开递交注册声明，印刷包含价格区间的初步招股书（或称「红鲱鱼」招股书），并开始IPO的市场推介阶段。

通常，从首次秘密递交到公开递交，SEC审查过程需要八周到12周的时间，但也可能需要更长的时间，取决于企业的具体情况。

IPO方案设计

在整个的文件准备和SEC审查过程中，企业应开始与投行共同合理设计IPO方案，以获得良好的市场反响。

优化发行规模

在确定适当的发行规模方面，企业应考虑发行资金用途和现有投资者的流动性诉求。

此外，企业应考虑发行规模的大小应切合大市行情。在市场环境下的预计需求总规模是多少？IPO规模能否确保该股后市交易具有足够的流动性？在指导企业应对这些问题方面，投行将发挥关键的作用。

适当的新股／旧股组合

在IPO中，为了筹集实施其业务战略所需的资金，企业发行足够的新股很重要。企业实现业务持续增长需要多少资金？企业是否具有适当的公开市场资本结构，抑或需要筹集更多的资金以实现去杠杆化？

根据上市前股东的流动性目标，企业还可能在IPO中包括旧股发行。实际上，在新股部分不能满足总发行规模的情况下，旧股往往是有益的。

如果发行中包括旧股，企业应考虑对股票故事的影响以及向投资界所发出的信息。鉴于中国成长型企业的大量资金需求，中国赴美IPO过去主要由新股组成，旧股占总发行规模的10%至20%。然而，在许多情况下，旧股往往要么占IPO更大的比例，要么根本没有。

IPO禁售要求

为了减少投资者对IPO上市后不久即增加股票市场供应量的担忧，企业及其董事、管理人员和股东必须作出禁售承诺，限制在短期内出售股票。美国IPO的禁售期通常为180天。

推出倒计时：市场推广策略

随著文件准备过程接近完成，企业还应将其注意力转向IPO的市场推广方面。这样，企业及其顾问将重点为企业精心打造一个严密的、有说服力的「故事」，以便向市场展示，并完成发行交易推出的筹备工作。

打造股票故事

股票故事将构成IPO市场推广策略的支柱，这将推动如何确定企业的市场定位，以及投资者在企业估值中参照哪些可比公司，并将围绕著IPO从观念上营造一个「必选股」的市场氛围。成功的股票故事将：

- 阐明市场机会及挑战
- 突出竞争优势与风险
- 传递业务增长目标
- 解释企业的财务模型
- 预计和解决投资者顾虑

培训销售队伍

紧接著公开递交注册声明和推出IPO之后，投行将对其销售队伍进行全面的培训，以确保其做好充分的准备吸引投资者，并为发行创造需求。

投行将发布一个内部市场推广文件，或称为「销售备忘录」，其中对企业故事、行业动态、近期财务状况和发行的主要谈话要点做了简要的说明。

通常，投行的股票研究分析员将在发行推出的时候举行一个内部「销售电话会议」，说明对企业和行业的看法。

投行还将举行一个有企业管理层参加的销售队伍「宣讲会」，这将为销售队伍提供一个与管理团队见面、观摩路演演示和参与问答环节的机会。

确定IPO价格区间

最后，投行将进行初步估值分析，以确定申报和发行的适当价格区间。

设定价格区间的目标是鼓励投资者考虑参与IPO，以及创造广泛的兴趣以有助于营造供求紧张气氛。

在确定价格区间问题上，投行和发行人需要捕获IPO的最佳价格，不过同时也要兼顾良好的后市表现。

定价高于或低于价格区间是可能的，但是如果最终价格大大超出区间范围，发行人可能需要递交一份修订后的注册声明，并可能使IPO交易推迟。

投资者路演和市场推广

一旦工作组确定不存在任何有待解决的重大SEC意见以及在市场状况允许的情况下，将公开递交注册声明，印刷初步招股书(即红鲱鱼招股书，构成注册声明的一部分)并分发给全球的投资者。红鲱鱼招股书包含投资者对企业估值的所有重要信息，是投资者在整个交易市场推广过程中参考的主要文件。

注册声明的公开递交，包括红鲱鱼招股书的印刷，标志著IPO市场推广阶段的正式开始。这一阶段有两个主要的目标：向市场传播企业的股票故事和投资主题，以及为IPO创造投资者需求。

全球投资者路演

投资者路演是市场推广阶段的重要组成部分，企业管理层有机会与投资者直接见面。路演通常持续8至10个营业日，涵盖了亚洲、欧洲和美国的各主要城市。

路演活动主要是与投资者的一对一会议，也会有小组演示报告会，以及在香港、纽约等关键城市的、规模更大的投资者午餐会。在整个的会议和演示报告过程中，管理团队将使用「路演演示材料」，这是一份由企业制作的包括企业和发行相关信息的演示报告。

路演团队通常包括两至四名企业高管(如首席执行官、首席财务官和首席营运官)。

在整个路演过程中，投行将：

- 协调管理层与投资者的接洽
- 向企业介绍每家投资者的情况和投资风格
- 陪同路演团队参加向投资者介绍发行的会议
- 提供市场环境分析和投资者反馈的每日总结

簿记建档过程

企业在进行路演的同时，投行及承销团其他成员的销售队伍将开始徵求投资者订单，这就是所谓的簿记建档过程。这些订单将表明：

- 投资者的身份
- 希望认购的股份数量
- 价格敏感性(如最高价)

投行不断收集来自市场的反馈和继续进行投资者需求的簿记建档，企业将在整个的路演过程中定期获得有关当前认购情况的最新动态，其中包括价格敏感性、投资者情绪和大市环境。

定价、分配和交易

基于在整个簿记建档过程中获得的订单和投资者反馈，投行和发行人必须确定IPO的最终发行价。在路演最后一天股市收盘后，投行、企业管理层和部分董事会成员将举行「定价会议」，为IPO定价。

定价时，目标不应单纯为实现IPO的最高价格，而是确定市场能够承受的最高价格，这将确立良好的交易势头，并为企业创造长期价值。

发行价一旦确定，企业管理层和投行将为IPO分配股票，这是决定每家投资者将获得多少股份的过程。

紧接著定价日的那天为交易首日，届时企业的股票将开始在早上开盘后在纳斯达克交易所交易。企业将在结算日收到通过IPO筹集的资金（通常为定价日的4个营业日之后），并同时标志著IPO过程的完成。

IPO后：投行还能提供什么

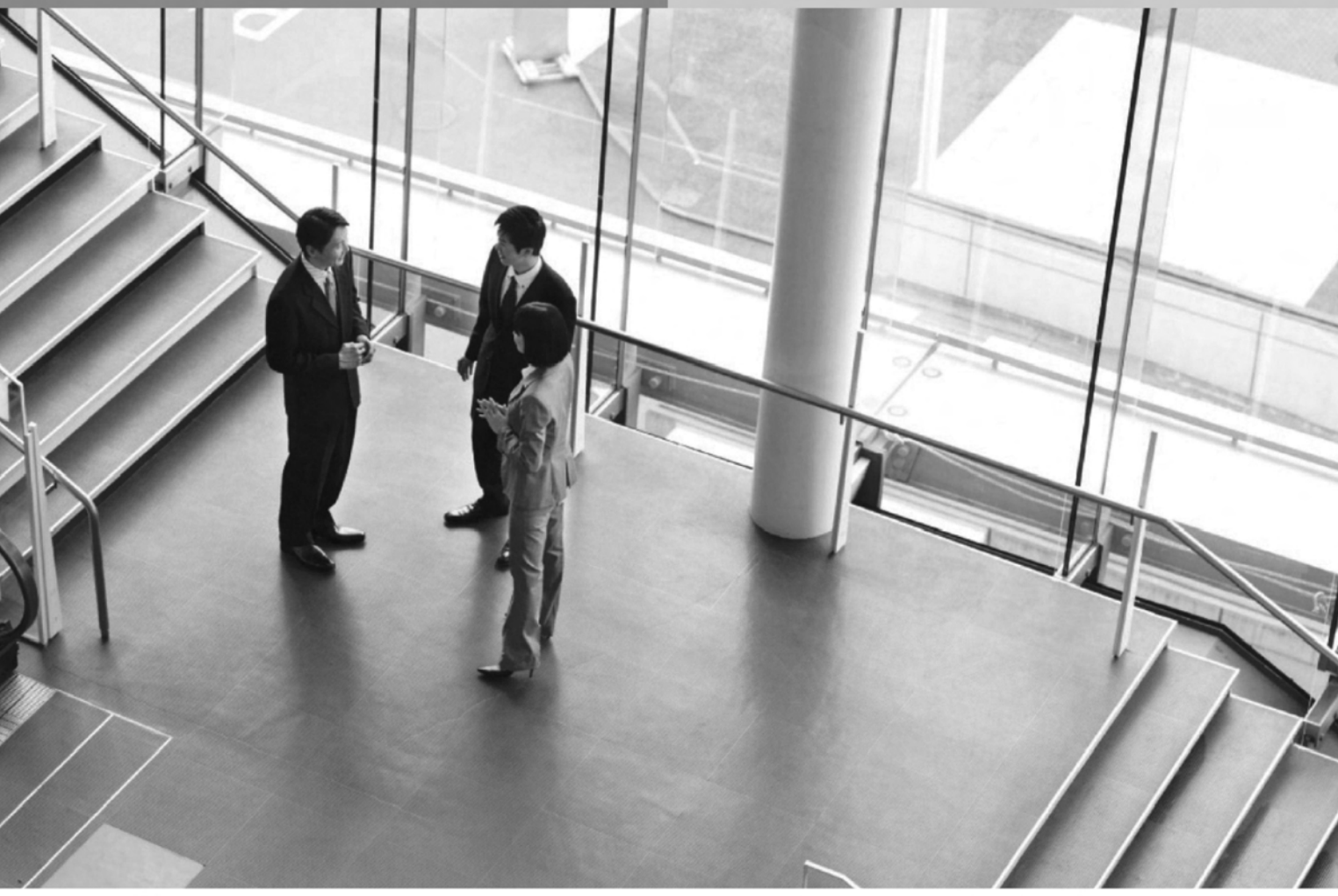
紧接著IPO之后的财报期间，企业应致力于一贯的业务和财务表现 — 尤其要重视发行之后的第一个季度。如果企业能够在业务和财务表现上不负所望，股价将自然跟进。

- 新上市公司的重点关注领域应包括如下各个方面：通过以下几个方面应对投资者和华尔街预期：
  - 谨慎进行业绩预估和与分析师的讨论 —「保守承诺和超额完成」总是更好
  - 致力于实现与预期一致的业绩并避免发生意外情况
  - 建立和维持市场信誉 — 实现前几个季度的盈利预期目标至关重要
- 因SEC、投资者、研究分析师、审计师和《萨班斯 — 奥克斯利法》等外部要求导致审查和信息披露要求提高
- 在如下几个方面扩大企业／上市公司职能：
  - 投资者和媒体关系 — 作为一家上市公司，企业应确保与市场的沟通能力，包括在美国的研究分析师和投资者
  - 董事会
  - 财务报告和内部审计

投行在帮助企业处理所有这些重要问题方面均能发挥关键作用。实际上，IPO往往只是与投行长期合作关系的开始，投行能在企业上市后提供范围广泛的服务，其中包括：

- 市场情报，例如包括该股市场推动因素、交易量和投资者反馈在内的市场动态，以及股东跟踪以分析主要股东的动向，并为股票增发／减持寻找潜在的需求来源
- 投资者关系，包括：
  - 非交易路演以进一步宣传股票故事和提升企业在投资者和研究分析师中的形象
  - 帮助准备演示报告、通讯及其它财务公告以精心打造股票故事并恰当确立新业务发展的市场定位
  - 与企业的大股东及全球其他主要投资者的联系和接洽
- 战略咨询，包括
  - 并购机会咨询
  - 未来融资策略建议
  - 市场与行业专长

对于投行而言，IPO仅仅是帮助企业在其作为上市公司的整个生命周期中实现诸多财务和战略目标的一个里程碑。



高盛成立于1869年，为全球各地数量众多、类型多样的客户提供广泛服务，我们的客户包括知名企业、金融机构、政府和高净值个人。

我们将人才、资本与理念结合起来，为客户提供解决方案和创造卓越业绩。我们有能力扮演多种角色：财务顾问、贷款人、投资人和资产管理人。我们相信，为客户提供优质服务和为经济发展创造机遇，是我们取得成功的前提。

Goldman Sachs

goldmansachs.com

3

存托银行的作用：美国和全球证券市场上发行人的资源

庄文华，花旗

存托凭证是非美国公司寻求海外募资的一个行之有效的选择。长期以来，存托凭证已经成为资本市场上广受欢迎的筹资工具，对于希望降低托管和跨境保管费用有明显诉求的客户尤为适用。

存托银行的作用

对于寻求在国际证券市场挂牌发行股票的非美国公司而言，存托凭证计划(DR)是一种有效的方案选择。存托凭证发行人能够获得的利益包括扩大投资者规模，因市场范围扩大令股票流动性增强，以及提升公司产品和服务的知名度。从投资人角度而言，存托凭证长期以来一直是全球各地区资本市场广受欢迎的工具，尤其是在减免证券托管和跨境保管开支是一项被重点考虑的市场。

存托凭证源于1927年，设立的目的是为帮助希望购买美国以外公司股票的美国投资人。自此以后，存托凭证逐渐发展成为被广泛接受的、操作灵活的融资工具，为全世界发行人提供了接触本土资本市场以外投资人的渠道。历史数据和最新数据均表明存托凭证作为融资机遇不断扩张。根据美联储统计数据表明，过去19年来美国投资人对美国以外股权的投资总量保持稳步增长，包括存托凭证和非美国公司股票，这一指标从1991年的2,790亿美元增加到2010年第三季度4.1万亿美元。此外，2010年存托凭证总体交易量上升到1,474亿美元，自2006年以来保持复合年均19%的增速，数据凸显了跨境交易长期稳定的增长趋势。具体而言，2010年，美国以外公司以存托凭证形式筹资规模达到207亿美元，较2009年同比增长26%。

发行人和存托银行的作用和关系

为建立任何一种存托凭证计划，发行人均需组建一支顾问团队，团队成员通常包括投资银行家、律师和会计师。发行人亦须聘请一家存托银行，存托银行是发行人至关重要的合作伙伴。存托银行通过本地市场托管银行的各项服务帮助发行人实施存托凭证计划。

当发行人及其融资顾问完成公司需求评估，并决定了最适合公司目标的凭证计划种类之后，发行人和相关存托支持方将各自履行一份存托协议，这份合同明确列出有关存托凭证计划条款。在存托协议的基础上，存托银行代表发行人和存托凭证的持有人履行特定的相关服务。发行人选择的服务机构将在发行人存托凭证计划的未来发展和日常管理中发挥重要作用。存托支持方在发行人、经纪商和投资人之间发挥重要的联络沟通作用，律师和会计师的职能侧重于定期的信息报告。除非发行人准备在市场进行再融资，一般来说，投资银行不会参与存托凭证计划。

表1 **相关各方在存托凭证计划建立中的角色**

存托支持方的角色	发行人的角色
提供存托凭证融资结构建议	决定公司目标和财务目标
聘请托管银行	聘请存托银行、法律顾问、投资银行和会计师
帮助发行人达到存托凭证登记要求	决定存托计划的种类
与律师和投资银行配合，确保计划所有实施步骤的执行落实	获得董事会、股东和监管机构相关批准
筹备和发行存托凭证	向会计师和融资顾问提供公司财务信息
向投资者群体宣布存托凭证计划的建立	制定投资者关系计划

如果评价一家存托银行

对于希望扩大资本融资渠道、拓宽投资者基础和享有存托凭证全部利益的发行人而言，存托银行发挥著关键的作用。发行人和存托银行建立起一种密切的合作关系，双方的关系在整个发行过程和各个实施阶段不断深化，并且在存托凭证计划未来管理中持续存在。

作为存托银行评价标准指引，发行人应考虑存托服务提供方的资源条件、市场经验、核心能力以及增值服务。

向存托银行提出的关键问题

(1) 存托银行从事证券服务的优势领域有多大？
(2) 存托银行能否为你的公司提供全面的银行服务和金融产品？
(3) 在投资人服务以及全球资本市场其他参与者关系方面，存托银行处于何种定位水平？
(4) 存托银行在你所处的地区及全球范围内，管理了哪些高流动性典范存托凭证计划？
(5) 存托银行在你所处地区拥有多少年的存托凭证发行人服务经验？
(6) 存托银行曾经赢得哪些第三方对其服务优于竞争对手评价的荣誉和奖励？

表2 **相关各方在存托凭证计划持续运作中的作用**

存托银行的作用	发行人的作用
担任存托凭证的转让和登记代理人	向存托行提供凭证以及在需要的情况下发行存托凭证
发行和取消存托凭证	与存托方沟通存托凭证计划相关事宜，包括计划可能的变化
处理公司治理相关事宜	通过本地托管行向存托凭证持有人支付股息
发挥支付代理人作用，负责存托凭证持有者的分红发放或其他权益	同存托行探讨公司治理相关事宜
为发行人提供后续的账户管理支持	应监管当局要求持续报备相应文件
为存托凭证持有者协调处理投票委任事宜	与存托行就股东服务进行沟通
提供增值服务，如投资者关系咨询	设计投资者关系计划

存托银行对投资者关系的承诺

存托银行所提供的广泛增值服务可以提高一家公司内部投资者关系水平，应当是发行人选择存托服务供应商的主要考虑因素。花旗是存托银行中提供投资者关系顾问服务的先行者，为发行人提供所需的专业服务和资源，帮助发行人实现投资者关系管理国际化的目标。

举例而言，在适当的情况下，存托银行的投资者关系顾问与发行人密切配合，共同制定投资者关系探求和定位战略规划。此外，针对发行人与财经媒体的关系、非发行性路演、投资者关系网站建设及外部投资者关系公司选择一系列问题，投资者关系顾问可以为发行人提供专业建议。存托银行还可以提供各种股东市场情报，帮助发行人获得全面的股权及同业股权数据和灵活的分析研究。

存托凭证的特点和利益

存托凭证是由美国存托银行发行的一种可转让工具，代表一家美国以外上市公司的证券股权。每份存托凭证代表存托的股权(DS)，代表存放在发行人本土市

场保管银行一定数量的公司股权。「存托凭证」这个词的含义通常是指实物凭证和证券本身两方面。

存托凭证一般能遵循个别交易市场的交易和结算流程。要区别不同种类的存托凭证，经常可以依据证券的交易市场或者凭证结构形式适用的规则和监管制度。举例而言：

- 美国存托凭证(ADRs)是指向美国投资人公开发行的存托凭证。
- 全球存托凭证(GDRs)是指向发行人本土以外两个或两个以上市场的投资人发行的存托凭证，并通常根据美国《1933年证券法》第144A项规则和第S项条例发行。

存托凭证的上市发行可以选择公开发行、面向特定投资者群体私募或者通过全球市场发售。存托凭证计划的结构形式限制了可以购买证券的投资者群体。在美国，公开发售的证券面向覆盖范围最广泛的投资人，在美国全国性股票交易所（如纳斯达克或纽约股票交易所）或者场外交易市场交易。全球存托凭证通常出售给美国的合格机构购买人(QIB)，包括拥有并投资至少1亿美元非关联公司证券的机构购买人，以及拥有或投资不少于1,000万美元非关联公司证券的注册经纪商—代理人。全球发行通常包含根据《1933年证券法》第144A项规则的证券发行部分，以及根据S条例向非美国投资人的证券配售。

有关存托凭证计划对发行人和投资人的好处，请参阅下表3。

在其他种类的跨境交易中，例如股权私有化和并购交易，存托凭证亦可以发挥重要的作用。

私有化

对于全球许多致力于经济结构重组和降低财政赤字的国家而言，国有资产私有化是政府面临的重要工作。基础设施和服务行业是政府实施私有化的常见目标部门，如电信、公用事业、航空和石化。

存托凭证已经被致力于国有企业私有化的政府成功地运用于实践之中。国有资产私有化需要面向投资人进行成功的证券发行，存托凭证提供了一种有效的海外资本筹集和提高股权私有化水平的机制。

表3 **存托凭证的好处**

存托凭证帮助发行人：	**存托凭证帮助投资者：**
获得发行人本土市场以外的资本来源	促进非美国证券的多样化
在美国和／或国际市场建立公司知名度	遵循投资人本土市场的程序和标准进行交易、结算和清算
拓宽和丰富股东基础	节约跨境委托保管成本
利用国际资本市场需求或交易推升本土市场股价的机会	扩大和丰富研究、价格和交易信息的来源途径
扩大公司股票的交易市场，提高股票流动性	有助投资人与本土市场上交易的类似公司的证券进行比较
通过存托凭证比率调整公司股票相当于同业股价的价格水平	采用美元支付分红，以英语发布公司重大事项公告
运用存托凭证工具，将存托凭证作为并购交易的货币，促进并购活动	确保统一的投票委托和企业行动的处理
为发行人本土市场以外的员工制定股票期权计划和股票购买计划	提供在不同资本市场之间融资的机会

并购

存托凭证可以降低跨境并购活动交易和结算的难度，还可以有协助一系列如发放股票红利、股票增发及徵集投票权等企业行动的实施。存托凭证帮助发行人无需在美国建立一个独立的股东服务支持体系或修改本土市场股票发行和交易结构，而能满足投资人的要求。成功使用存托凭证工具进行并购交易的案例种类包括非美国分公司的分拆、以股权为基础收购美国附属公司、以股权为基础收购非美国业务附属公司。

存托凭证的其他选择方案

发行人根据自身具体目标设计存托凭证计划的结构形式。在选择最佳存托凭证方案时，发行人的目标还包括扩大股东基础、提升国际市场对公司知名度、产品和服务的认可、运用存托凭证作为融资工具和为海外员工提供便利的投资工具。

设定比例

建立存托凭证计划的一个重要步骤是决定存托凭证与发行人股权的比例，股权与存托凭证之比采用系数或者两者百分比的形式，这一比例可以影响价格幅度。发行人在设定比率时应考虑下列因素：

- 行业同业公司：发行人所处行业其他公司证券的交易价格通常在特定的区间内波动。在存托凭证挂牌的资本市场上，发行人可能希望达到并遵循行业的一般标准。
- 交易所的选择方案：每个交易所对挂牌的股票均有平均股价范围，一般而言，发行人可能希望遵循这一平均水平。
- 投资者的偏好：美国机构投资者和散户投资人更可能购买他们认为定价和估值合理的股票。

尽管许多存托凭证计划建立采用1：1比率（一股相当于一份存托凭证），但现今市场上存托凭证计划的比率可涵盖从100,000：1至1：100的值域范围。存托银行将与发行人共同讨论决定存托凭证计划设立时最合适的股权比率。这一比率未来可根据市场环境的变化进行调整。

存托凭证计划的种类

在美国，存托凭证可以：

- 在美国全国性交易所挂牌上市：纳斯达克股票市场(NASDAQ)或者纽约股票交易所(NYSE)（第II级）
- 在美国的交易所（第III级）公开发行
- 通过Pink Sheet市场或OCTQX报价系统（第I级），在场外市场交易
- 依据美国第144A项规则规定，面向合格的机构购买人发行。

在国际资本市场上，存托凭证可以：

- 根据美国《1933年证券法》第S项条例要求，面向非美国个人投资人在美国以外发行。需要指出的是，依据第S项条例的存托凭证计划通常与依据第144A项规则的存托凭证计划一起在国际市场上发行。
- 通过全球市场发行筹集资本。（如依据第144A项规则的全球存托凭证和依据第S项条例的全球存托凭证发行）。

存托凭证计划的选择方案

在美国挂牌上市的存托凭证计划

在美国全国性交易所挂牌上市可以促进美国存托凭证交易活跃度，并提高发行人在美国市场的知名度，因为公开挂牌的美国存托凭证通常获得当地股票分析师和财经媒体更广泛的关注，因而为投资人提供有关发行人及其证券的丰富信息。

发行人还可以运用美国存托凭证接触到机构投资人，因为受到各自公司章程

表4 **扩大现有股权条件股东基础，存托凭证计划能提供下列选择方案**

	场外交易第I级	交易所交易第II级
定义	在美国场外市场买卖	在美国公认的交易所挂牌
交易地点	在 Pink Sheet 交易市场报价／或在 OTCQX 报价系统	纳斯达克或纽约证交所

或监管政策限制，美国机构投资人可能无法投资美国以外、在发行人本土市场交易的证券。美国投资人偏好于购买美国存托凭证，而不是发行人本土市场的股票，因为存托凭证相关证券在交易、清算和结算方面均遵循美国市场标准。为实现在美国交易所公开挂牌美国存托凭证，发行人必须遵守相关股票交易所的要求。发行人必须根据《1933年证券法》和《1934年证券交易所法》进行公司注册，并提交初步的注册声明和定期提交报告。非美国发行人必须按照美国通用会计准则(GAAP)或国际会计准则理事会公布的国际财务报告准则(IFRS)对所有公司财务报表进行修订，个别附属业务的财务报告则无需与美国GAAP或IFRS标准一致。证券挂牌上市将免除非美国发行人接受各类官方证券监管政策的约束。

在第III级存托凭证计划中，发行人向美国投资人以美国存托凭证形式发行新股。透过公开发行，发行人可以通过美国最广泛的投资人群筹集资本。为了实施在美国市场首次公开上市发行(IPO)，发行人必须：

1) 向美国证券和交易委员会提交所发行证券注册的F-1表格；
2) 按照美国通用会计准则或国际财务报告准则(或包括美国通用会计准则财务报告标准)对公司财务报表进行全面修订；
3) 与存托银行配合，向美国证券和交易委员会提交美国存托凭证注册的F-6表。

在建立第III级美国存托凭证计划时，发行人还需要聘请一家投资银行提供发行保荐和承销服务，向美国投资人介绍和推销发行的美国存托凭证。发行完成后，该计划作为挂牌上市的证券，通常可以接受来自投资人的后续存托。发行人还可以通过继续发行证券筹资资本，在今后发行存托凭证时，发行人需要向美国证券和交易委员会提交F-2表或F-3表。

依据第144A项规则的存托凭证

依据第144A项规则的存托凭证是指在美国市场私募的存托凭证。这类存托凭证的交易遵循第144A项规则的要求。第144A项规则从1990年开始实施，准许合格的机构购买人将相关证券私下转售给其他合格的机构购买人，规则没有证券持有要求或其他限制，这一规则大大提高了私募证券的流动性。

全球存托凭证

全球存托凭证能帮助发行人通过全球发行筹集资本。全球发行令发行人接触到本土市场以外资本市场的股东。全球存托凭证采用全球结算标准体系，该体系可能包括提供国际结算和清算服务的存托公司(Depository Trust Company)、欧洲结算系统(Euroclear)和清算流程(Clearstream)，最终通过跨境交易促进市场流动性。

全球存托凭证可以透过公开市场或私募市场发行。大部分全球存托凭证也包括美国市场发行部分，这部分存托凭证可以依据第144A项规则进行私募，以及依据第S项条例在美国市场以外募集国际部分 — 通常是在欧洲市场。在欧洲市场募集的全球存托凭证通常在卢森堡或伦敦交易所挂牌交易。

全球融资市场已出现了几个正在成长的上市地点，可能扩大存托凭证发行人的选择机会。这些上市地点包括新加坡交易所和迪拜国际金融交易所。

表5 **通过发行新股筹资的存托凭证计划选择方案**

	公开发行第III级	依据第144A项规则的存托凭证	全球存托凭证(GDR)
定义	在公认的美国全国性交易所发行和挂牌	在美国向合格机构购买人进行私募	发行人本土市场以外的全球募集可能包括依据第144A项规则的存托凭证或依据第S*项条例发行
交易	纽约股票交易所或纳斯达克	美国的合格机构购买人交易网络	伦敦股票交易所，卢森堡股票交易所或其他交易所

地区性存托凭证的逐步发展突出全球存托凭证的灵活性，全球存托凭证有助于发行人选择自身希望接触到的投资人基础，并在新市场扩大股东基础。举例而言，发行人可以建立仅仅针对欧洲、亚洲或拉美地区投资人的全球存托凭证，而不在美国市场发行股票。随著时间的发展，全球存托凭证可能提升到覆盖其他资本市场和投资人。

将全球存托凭证升级为公开上市存托凭证计划

一家非美国公司可能决定在依据第144A项规则和第S项条例发行存托凭证之后将存托凭证挂牌上市。对于希望实现广泛全球市场覆盖和提高知名度的公司而言，从全球存托凭证升级为在美国市场挂牌的美国存托凭证计划是一个可行的方案。第S项条例存托凭证在发行之后40天挂牌上市较为容易，而依据第144A项规则的存托凭证挂牌上市具一定的挑战性。第144A项规则存托凭证不可以以活跃的交易方式与公开挂牌的存托凭证计划共存。为了将第144A项规则存托凭证升级为公开挂牌，发行人通常首先需要根据《1933年证券法》提交注册声明的F-4表。在注册声明F-4表申报之后，发行人可能需要向合格机构购买人提出注册交易所要约。在特定情况下，如果第144A项规则存托凭证计划「比较成熟」，发行人可能倾向于采用某种资格认证程序的私营交易，而不选择依据《1933年证券法》的注册交易。

存托凭证的发行和取消

根据现实条件和市场环境，投资人可以透过两种方法取得存托凭证，一种方式是购买现有的存托凭证，另一种方式是将从发行人本土市场购买的股票转换为存托凭证。新存托凭证发行是在投资人或经纪人在存托银行本土市场的保管银行存入资金之后。存托银行然后向投资人或经纪人发行存托凭证，代表存放的股票，这一过程被称之为存托凭证的发行。

反过来，如果在存托凭证交付之后，投资人取消存托凭证并卖出本土市场的普通股票，或者投资人向存托银行发出取消指令，则存托银行取消存托凭证，并根据投资者的指令通知保管银行取出股票。经纪人然后保管这些普通股票或在本地市场上售出。

流动性

对于众多存托凭证市场参与者而言，流动性被视为衡量存托凭证计划长期成功的最佳指标，流动性的含义是指交易活动长期稳定的宽度和深度。如果市场环境不能提供充分规模的投资交易建仓和平仓，投资机构一般不愿意把公司加入到管理资产组合中。同样道理，经纪人青睐于交易流动性高的证券品种，买方和卖方的分析师也偏好于研究高流通性证券，这类证券遵循严格的财务信息披露标准，为投资人提供重要的额外保障。一旦建立起来，通过投资者关系管理和存托银行和其他合作机构的资源，可以促进和保持证券的高流动性。

花旗「流动性溢价」研究结果（罗格斯大学法学院商法期刊2007年发表）基于近年来的学术研究表明，在美国全国性交易所交叉上市的公司较未进行交叉上市的公司平均可持续估值溢价达到33%。花旗的研究还发现，无论是交叉上市还是直接上市的公司，按照市账率指标衡量(P/BVs)，平均而言，拥有高流动性存托凭证的公司估值水平高于存托凭证流动性较低的公司，

受限制的双向市场

一些国家对存托凭证的新发行仍有限制。在受限制的双向市场环境下，存托凭证的普通股票在提取和售出之后，股票重新放入存托凭证额度即受到限制。例如，股票存放数额可能有一定限制。一旦达到上限标准，存托凭证额度即不再接受重新发行。相反，大部分国家都拥有没有限制或者自由化的双向市场，外国投资人可以在任何时间购买本地市场流通的普通股票，用于存入凭证额度之中。

限制政策放松可能通过下列途径惠及发行人：

- 加快存托凭证发行速度的可能性。
- 长期而言有助于提升流通性。有能力发行和取消公司的存托凭证可以促进交易活动。相关优势包括投资人需求增加和估值水平提高。
- 股价波动水平下降有助于减少风险。因公司流通股票规模扩大，供需变化导致的股价震荡幅度缩小。
- 拓宽本地资本市场上非美国资金投资的机会。

存托凭证溢价是指本币计值的普通股股价与存托凭证价格两者之间的差额。

从历史表现来看，在美国股市表现跑赢非美国市场的时期，上述溢价幅度上升。在本地股市表现跑赢美国市场的时期，溢价水平缩小。受限制的双向市场可以一定程度上促进跨境流通性，然而与无限制的双向市场相比，这类市场无法显著降低存托凭证的溢价幅度。

美国证券监管制度和存托凭证

存托凭证发行人必须遵守存托凭证发行所在资本市场的监管制度。在美国资本市场上，美国政府设立了美国证券交易委员会，作为政府的独立代理人，该委员会负责执行联邦证券法律，监督证券发行、交易活动和从事证券市场活动的个人。为保护美国投资人和美国资本市场的利益，美国证券交易委员会要求发行人披露公开上市证券相关资料信息。委员会根据政府授权发布监管政策、执行联邦证券法和委员会自身的监管政策。

存托凭证发行人必须遵守两个核心的美国证券法规：

- 《1933年证券法》，修改后的法案(「证券法」)。
- 《1934年证券交易所法》，修改后的法案(「交易所法」)。

简而言之，美国证券法的核心宗旨是为投资人提供发行人证券发行和出售相关的充分、公平的资料信息披露。交易所法的不同之处在于交易所法的核心宗旨是，为二级市场上进行证券交易的投资人持续提供充分而公平的发行人资料信息披露。

随著美国监管环境趋于更加严格，一些发行人感觉有必要重新对存托凭证成本与美国挂牌上市利益进行评估比较。但是，鉴于许多国家近年来业已加强了监管合规要求，许多发行人认为美国监管环境不是一项障碍因素。实际上，美国以外其他许多股票市场对上市公司治理机制要求同样严格，甚至更为严格。一些投资者关系专家指出，更严格的监管意味著上市公司体现自身差异性的机会。当投资人进行风险／回报评估时，对于能符合某些监管标准的上市公司而言，投资人拥有更大的信心。

对于近期出台的公司治理新法规，美国证券交易委员会注意到发行人对此产生的一些顾虑。举例而言，委员会已经执行了让非美国公司豁免适用美国萨班斯奥克斯利法的案例，并且继续评估法规豁免适用情况。此外，2005年12月一系列影响美国证券发行流程的改革措施生效，这些措施将简化美国公司和非美国公司进入美国资本市场融资程序，包括发行存托凭证的公司。

结论

存托凭证是公司进入全球金融市场十分有利的途径，为美国以外的发行人和国际投资人提供了可观的利益。对于发行人而言，存托凭证计划有助于扩大和丰富公司股东基础，拓展公司股票流通市场范围，并且有助于提高股票流通性。存托凭证对于寻找无需支付跨境保管成本的全球投资人而言具有吸引力，同时增强了在公司研究、股票价格和交易信息的来源渠道。

存托银行是发行人建立存托凭证计划和长远管理的重要合作伙伴，存托银行在计划建立方面的作用包括对存托凭证结构形式提出建议，与律师和投资银行配合确保所有步骤落实和完成。在未来管理过程中，存托银行的核心作用包括发行存托凭证、为发行人提供账户管理和投资者关系支持。

发行人选择存托银行需要考虑的一个关键问题是银行提供的增值服务，增值服务的设立宗旨是作为对公司投资者关系管理的补充。

花旗为中国公司实施的美国存托凭证计划

花旗存托服务是中国市场的领先者，近年来凭借我们高质量的服务和专业的服务团队，我们在中国市场赢得最多ADR新上市计划。2010年，以美国存托凭证计划形式为中国企业筹集规模达到53亿美元，包括首次公开上市(IPO)和后续发行。花旗在存托凭证首次公开上市领域居于领先地位，以存托凭证形式筹集资本超过19亿美元 — 占中国IPO市场份额的47%。我们的亚洲团队在公司上市之前为发行人提供一系列专属服务，在上市之后提供后续支持。这包括我们的投资者关系服务，服务内容涵盖培训和公司知名度提升计划，以帮助发行人加强与美国相关投资人群体的信息沟通。

2011年，花旗获《资产》杂志颁发最佳美国存托凭证银行奖项，并且连续七年被该杂志授予最佳存托凭证银行荣誉。

存托凭证服务介绍

存托凭证服务隶属于花旗的资本市场和银行业务系统，这一服务领域在帮助优质发行人进入美国和全球资本市场及促进存托凭证作为有效的资本市场工具发展方面居于行业领先者地位。花旗的存托凭证服务始于1928年，时至今日，帮助非美国公司进入庞大的全球融资平台成为花旗的责任，对此花旗业已获得广泛的业界赞誉。有关存托凭证的更多信息，请登录花旗网站查询，网址www.citi.com/adr。

有关花旗

作为领先的全球金融服务公司，花旗拥有大约2亿客户账户，业务覆盖范围超过160个国家。集团下设花旗公司和花旗控股两个经营实体，为零售客户、公司、政府和机构客户提供丰富的金融产品和服务，包括零售银行业务和信贷、公司和投资银行业务、证券经纪、交易服务、财富管理。如欲了解更多信息，请登录网址www.citigroup.com 或www.citi.com查询。

有关环球交易服务

环球交易服务隶属于花旗的机构客户业务系统，为全球各地区的跨国公司、金融机构和公共部门组织提供一体化的现金管理、贸易、证券和资金服务。业务覆盖范围超过100多个国家，花旗环球交易服务支持的客户数量超过65,000家。截至2010年第四季度，环球交易服务持有的负债余额达到3,530亿美元，保管的资产规模高达12.6万亿美元。

存托凭证服务的有关信息，请访问网址www.citi.com/adr 或联络：

花旗亚太地区存托凭证服务团队：

香港

Miguel Perez-Lafaurie，亚太区负责人，
电话 +852 2868 8041
庄文华，大中华区负责人，
电话+852 2868 8992
张梅，副总裁，电话+852 2868 8993
邓卫国，副总裁，电话+852 2868 8063
北京／上海(Tina can you provide Chinese names？)

张擎，副总裁，电话+86 21 2896 6563
徐科珍，客户经理，电话+86 21 2896 6559
胡琨，客户经理，电话+86 10 5937 6083

环球交易服务

www.transactionservices.citigroup.com

网罗最广博的资源，让您的存托凭证项目实现有效管理、持续增长，成为竞夺环球投资者青睐的胜负关键。

花旗遍及全球的业务网络、地方专才和端对端专业服务 — 从我们无与伦比的专属分销网络，到我们的内部投资者关系顾问 — 定能助您完善您的资本市场交易，实践最佳的交易执行效益。

为了服务市场川流不息的运作，花旗永不言倦。

欲了解更多详情，请浏览我们的网站 www.citi.com/adr。

Citi never sleeps®

citi®

4

会计师在上市过程中的角色

白岚，肖敏，邓颖雯

普华永道会计师事务所

凡公司着手筹备在美国公开发售证券，可在美国证券交易委员会前执业的合资格会计师，乃公司密不可分的伙伴。除基本财务报表审核外，独立注册会计师亦可在包销商进行尽职审查过程时居中协助，并就管理层在公众公司经营年期内如何提升现有程序及监控给予独到见解。

在美国公开发售证券(往往是全球发售的一部分，统称为「首次公开发售」)中，发行人需要与多家顾问机构密切合作，而具有美国证监会认可执业资格的会计师便是不可或缺的一员。首先，发行人的财务报表需经美国证监会认可的独立会计师审计。除基本财务报告审计以外，独立注册会计师也会 参与其相关的方面协助承销商进行尽职调查，并就如何提升一个上市公司现有的流程和控制提供见解。越来越多的拟上市机构还会聘请另外一家会计师事务所为其提供非审计咨询服务。就此而言，在另一家独立的会计师事务所的支持下，发行人可以利用更多资源来更好地进行财务报表和上市资料的信息披露，满足投资者对披露信息的越来越高的期望和要求。

许多拟上市公司发现自身缺乏足够的经验和专业实力，无法有效地编制所需财务信息，或不具备在不断发展(有时是不确定的)的市场状况下成功完成企业上市计划所应具备的灵活性。鉴于编制财务信息是企业上市过程中最重要的工作任务之一，审计师和财务顾问须具备以下资质：

- 具有协助企业成功上市的丰富经验和优异的业绩记录；
- 擅长在会计技术问题和美国证监会合规编报方面提供切实可行的咨询建议和意见以及相关支持；
- 在拟上市企业所在地拥有丰富的资源，以确保了解当地业务实务并降低执行风险；
- 随时准备为客户提供所需服务，抓紧市场机会

随著会计师行业在新兴市场的壮大，选择最适合自己的美国公认会计准则和上市业务专家对企业而言具有一定的挑战性。为确保公司作出正确的决策，对备选审计师和财务顾问的资质和经验进行仔细评估十分重要。虽然目前中国大陆和香港的会计师行业发展十分迅速，但是，具有多年上市项目经验的合格会计师的人数增长得还很有限。由于大量的市场需求，聘用最恰当的专业会计师不一定是最节省成本的选择，但是，他们将无疑能够提高公司有效应对上市过程中各种问题的能力，并降低执行风险。同时，上市中发生的任何延误都可能致使拟上市公司错失最佳时机，导致数百万甚至亿计的募集资金损失，而好的会计师会帮助公司避免这样的延误。

本章节以下部分对非美国公司根据美国证监会规定在美发行证券过程中进行初期和持续财务报告所须遵循的要求，以及会计师在企业在美上市之前、之中和之后的角色和作用进行概要说明。

美国的会计制度与申报制度

各国的企业为实现其发展目标，都需要利用资本市场来满足其资金和竞争战略的需要。美国的证券市场由于其规模、良好的信用和投资者的热忱参与，使其成为世界上最为富有的资本源泉。在美国纳斯达克市场进行证券的公开发行，能够为公司带来长期资本的注入，从而帮助公司成长、增加股东价值、降低公司总体资金成本，同时还可以提高公司的国际知名度。然而，由于美国投资者对信息披露的质量要求较高、注册和发行程序又要求严密、法律环境复杂等因素，使得非美国公司在美国进行首次发行上市面临较大的挑战。

任何在美国公开发行的证券，包括股票和债券，均需向位于美国首府华盛顿的美国证监会注册并获批准。美国证监会是美国证券市场的主要管理机构，其主要职责是保证投资者获得充分的信息以作出投资决策。故此，美国证监会设计了一系列的注册法规、条例与文件，并负责审阅拟上市公司的招股说明书，以判断公司的信息披露是否充分，并决定能否使招股说明书生效。

鉴于在美国的证券市场公开发行证券融资需要经过繁琐和复杂的程序，而且如何正确地应用美国公认会计准则也是一个复杂的问题，准备在美国上市的

中国内地和香港公司必须要对其工作人员(尤其是财会人员)进行充分的培训和教育，让他们了解和熟悉美国证监会所制定的各项法令、条例和文献、以及有关财务报告体系的框架。

正如目前广泛报道的，国际财务报告准则与美国公认会计准则的制定机构已经达成共识，将在未来的若干年内使两套准则趋同，并在美国证监会的支持下对现有两套准则进行修改，制定一套全球适用的高质量会计准则。除此之外，在飞速发展的全球经济大环境中出现了越来越复杂的交易和金融产品，而其中的很多需要由新出台的会计准则和解释公告进行规范和说明(这些准则和解释公告通常也同样复杂)。即使国际财务报告准则这样基于原则的准则体系也是如此。

美国公认会计准则委员会和国际会计准则委员会(IASB)一直以来都在合作以融合两套准则。已取得进展的若干项目包括：收入确认，租赁，金融工具等等。虽然，把这两套准则完全融合存在一定难度，但基于目前的进展人们相信两者未来的差异将会非常有限。

美国证券交易委员会预计将在2011年作出决定，选择是否进一步将国际财务报告准则引入美国资本市场。如果国际财务报告准则被纳入美国财务申报系统，美国证券交易委员可能会给出一个较长的过渡期(例如，四年以上)以便给公司足够的时间实施新的报告框架。这项决定将大大影响已上市的公司，需要公司投入大量资源进行事先的规划。

公司要在美国上市除了要面对严格的财务审计外，还要面对的另一个问题就是如何遵循美国于2002年颁布的《萨班斯 • 奥克斯利法案》(《萨奥法案》)，特别是其404条款。新上市公司面对的主要挑战之一将是确保公司的内部控制满足各种法规要求。萨奥法案要求上市公司的首席执行官和首席财务官在向美国证监会呈报财务信息的同时，分别对公司的财务报表的准确性以及公司信息披露控制和程序的有效性发表声明(《萨奥法案》302条款声明)。另外，当公司在美国证券市场上市一年以后，公司的首席执行官和首席财务官须分别对公司所实施的针对财务报告的内部控制的有效性进行评核与声明，而公司的独立会计师须对该公司内部控制的有效性进行独立鉴证并发表审计意见。

在美国公开上市对会计和报告方面的要求

注册表格

大多数境外私有发行商都使用F-1表来向美国证监会提交注册文件。在向美国证监会提交注册文件时，还有两款常用的表格。一是F-3表(简称为「简表」)，F-3表对文件内容的详细程度要求不如F-1表高，只适合已在美国证监会登记注册的境外私有发行商在某些情况下使用。另外，如果公司只是有意在纳斯达克市场挂牌但不进行融资或公开招股，也可使用20-F表作为其注册文件。

注册表格的编制

编制注册文件是一个复杂的过程，需要消耗很多的时间且技术性很强。公司的管理队伍、律师和会计师都需要付出大量的时间和精力准备该文件。想要有效地遵循美国证监会颁布的条文，提供所有必要的信息并完成注册程序，必须事先做好统筹安排和协调工作。

上市进程未能按照事先的时间安排进行的主要原因是事前的上市准备工作没有到位：如果准备工作没有做好，必定导致文件提交时间的延误或美国证监会的反复问讯。因此，负责整个上市计划工作的小组必须对注册文件要求的内容十分熟悉、必须了解文件提交的最终期限、必须定期审核注册文件各部分的完成情况，并确保各部分的审核工作可以及时的完成。以下是针对财务信息披露的讨论。

财务信息

美国证监会对财务信息披露的内容及其时效都有严格的规定。公司应借助其会计师的经验深入了解有关的条文，并准备相关的财务资料。

境外私有发行商一般要在F-1表内披露以下的财务信息：

经审计的资产负债表和过去三年的损益表、现金流量表和所有者权益变动表。这些报表是按照美国公认会计准则或国际财务报告准则（由IASB所发布）准备，也可以按照本国的会计准则准备(前提是该准则被美国证监会认可)。在后一种情况下，最近两年的财务报表需要按照美国公认会计准则编制调节表。

鉴于国际财务报告准则与美国公认会计准则的趋同，拟上市公司开始斟酌采用哪一准则作为其财务报告的编报基

础。基本上，所有目前在美国上市的中国公司都采用美国公认会计准则准备上市财务报表以增强他们和其他同业公司的可比性。但也有同时在香港和美国上市的电信，石油，工业和航空公司考虑到香港的法定要求，选择使用香港财务报告准则或国际财务报告准则。根据美国证监会在2007年12月发布的新法规，对于境外私有发行商，如果依照国际财务报告准则编制财务报表，将不再需要提供美国会计差异调节表。美国证监会特别指出，为了满足取消美国会计差异调节表的条件，财务报表的编制基础必须依照由IASB发布的国际财务报告准则，而非其他类似的国际财务报告准则（例如，香港财务报告准则或由欧盟地区采用的国际财务报告准则就不能符合要求）。此外，依照除美国公认会计准则或由IASB所发布的国际财务报告准则以外的其他会计准则所编制的财务报表，仍将需要提供美国会计差异调节表。随著国际财务报告准则和美国公认会计准则不断融合，公司应咨询其会计师和其他顾问，就其报表编制准则进行选择。

如果公司选择依照美国公认会计准则或由IASB所发布的国际财务报告准则编制财务报表，则须提供最近两年的资产负债表，以及最近两年的损益表、现金流量表和所有者权益变动表。无论采用哪种呈报方法，在美国上市公司会计监管委员会注册的独立会计师均需要按照该委员会要求的标准对公司财务报表进行审计。

财务报表的时效性限制

美国证监会对注册文件里包含的经审计的财务报表是有时效性限制的。在首次公开招股上市的时候，经审计的财务报表的有效性是12个月，也就是说经审计的资产负债表结帐日距离提交注册文件的时间不应超过12个月。但是，当该境外私有发行商在其本国或其他地区已是一家上市公司时，则其经审计的财务报表的有效性可延长至15个月。首次招股上市的公司通常会选择提交最近会计年度的财务报表。

如果注册文件中经审计的资产负债表日距离提交注册文件日已超过9个月，公司还必须提供本年度的中期合并财务报表，其中至少应包含当年度上半年的财务数据和前一年同期的可比损益表数据。

中期财务报表的披露要求明显少于全年财务报表的披露要求，但是当中期报表不是按照美国公认会计准则或由IASB所发布的国际财务报告准则编制时，公司必须另外编制美国公认会计准则差异调节表及附注。中期财务报表一般是未经审计的，但承销商可以要求独立会计师按照美国证监会的要求对其进行审阅或审计工作。

财务信息摘要

公司要从最近5年（如果公司成立不足5年，则自公司成立当日起）期内的年度资产负债表和利润表中摘取一些重要的财务信息作为财务信息摘要（简称「五年摘要」）予以披露。这些信息可按照公司在当时准备财务报表时所采用的会计准则呈报。但是最近两年的财务信息要与按照美国公认会计准则准备的数据进行差异调节，或者直接呈报按照美国公认会计准则或国际财务报告准则准备的数据。此外，五年摘要还应包括在招股说明书中披露的所有中期财务报表数据。

对于五年摘要中最早的两年财务数据，公司可能需要花费庞大的成本和精力去获得。美国证监会原则上同意，如果公司可能需要花费庞大的成本和精力才能获得最早的两年财务数据，则公司可以不提供这些数据，但是必须在招股说明书里披露背后的原因。从过往的经验来看，一般都是大型国有企业重组后上市情况才能适用这方面的豁免，因为有关的重组计划往往包括复杂的业务与资产剥离，申请豁免的原因比较充分。

对于首次采用国际财务报告准则来准备财务报表的公司来说，上文提到的《填报指引G》规定五年摘要中的最近两年的财务信息必须来自按照国际财务报告准则编制的财务报表。

上市公司其他需要单独披露的财务报表

对公司最近的重大收购或准备执行的重大收购，美国证监会要求拟上市公司提交被收购的业务最近一至三年的经审计的单独财务报表，具体的时间要求因这

些企业是否符合某些重要性标准而异。此外，还要将最近一至两年的财务报表与按照美国公认会计准则准备的数据进行差异调节。

需要注意的是，一旦任何被收购业务、拟收购业务、以权益法核算的重要被投资单位需要披露单独财务报表，这些报表都必须依照PCAOB的审计准则经过审计。此外，由于美国证监会对财务报表有时效性的限制，拟上市公司还有可能需要提供被收购企业未经审计的中期财务报表。在特定情况下，还需要披露公司财务担保人的单独财务报表。

上市公司的单独财务报表

在最近一个财务年度截止日，如果上市公司的某些子公司的资产受到外界因素限制，不能完全上缴给上市公司时，有关受限因素应在招股书中披露。又如果受限的净资产超过上市公司合并净资产额的25%，则应提供上市公司的简明财务报表。受限的净资产是指在未经第三方批准前不得以借款、预付款或现金股息的形式从子公司转让给上市公司的净资产。很多在中国注册成立的子公司都因为中国公司法的规定，不可以向上市公司随时转移自己的资产，故很有可能受此规定影响，而上市公司则需要披露自身的简明财务报表。

模拟财务信息

即将发生的某些重大交易对公司的财务状况和经营结果都可能会造成持续性的影响，为了让投资者对公司的财务数据有更深的了解，公司需要按照美国证监会颁布的条例准备模拟财务信息。模拟财务信息是一种附加的披露，公司要假设该项重大交易在早些时候已经完成，并就已知的交易后事项对历史财务数据作出模拟调整，并加予附注向投资者说明该项交易的影响。

出现以下情况，企业需要提供模拟财务信息：

- 在最近一个会计年度或其后的中期会计期间发生了或有可能发生重大企业合并事项；
- 发生了或有可能发生企业重要业务的出售，且在以往的历史会计报表中未作充分披露；
- 企业重组计划或业务剥离；
- 其他已完成或可能发生的事项或交易，其模拟财务信息对投资者的投资决定有重大的影响。

公司高级管理层、董事和主要股东的背景介绍与薪酬安排

F-1表要求公司介绍其高级行政职员和董事对公司业务的经验和其薪酬总额；董事和主要股东的股票持有状况；公司与高级职员、董事和主要股东的交易和向其发放的借款情况；以及与承销商进行的交易和向其支付的报酬。针对公司高级管理层和董事个人薪酬信息的披露只有当公司注册成立的所在地有相关的法律要求或已在其他地方公开披露后才要求进行披露。尽管如此，拟上市公司必须注意，为提高上市公司的治理水平，近年来各个监管机构都把对管理层和董事的所有薪酬信息进行高透明度的披露视为其工作的重点之一。

公司业务经营和财务管理状况的讨论及展望

美国证监会要求公司管理层对公司各项业务的经营结果和财务状况进行分析讨论。此外，管理层还需要对公司各项业务未来期间的经营预期与财务状况作出趋势性的讨论。

美国证监会在审阅注册文件时，经常著重于公司管理层是否已经对公司各项业务的经营结果和财务状况进行详细与完整的分析讨论，因此认真编写这部分的文件是非常重要的。此外，讨论内容应客观地说明公司的情况，不仅要讨论有利于公司经营的各种因素，还要披露那些不利于公司经营的实际情况对公司的现有及潜在的影响。

文件中应包含的具体内容有：

- 经营结果 — 公司应对影响公司收入、经营费用或经营盈利的重要因素和趋势作出描述，包括异常或罕见事件或市场新的发展方向等，并

指出对收入、费用与盈利的影响程度。此外，还应说明通货膨胀、外币汇率浮动或政府经济政策等其他经营环境因素是否会对公司的经营成果带来重大影响。

- 流动与长期资金的来源 — 公司需要提供有关公司短期和长期流动资金的资料，对流动资金的变动趋势进行描述。其中应包括阐述公司来自内部和外部各项资金的来源、评价公司是否有充足的现金流来源、披露借款水平与使用过的金融工具、阐述现行的资金政策，以及详细讨论公司的重大资本性支出承诺。
  - 研发、专利和营业执照 — 公司需要披露过去三年内公司采用的研发政策，如果公司研发成本较高，还应披露成本金额。
  - 业务走向的趋势信息 — 公司应阐述最近财务年度以来在生产与销售、存货与订货、成本与销售价格等方面的重大趋势。

此外，公司还需要对未来可能对公司收入、盈利能力、流动资金来源等带来重大影响的已知趋势、不可预测的外在因素、合约义务或其他事件进行分析和讨论。

- 账外安排 — 公司需要披露所有已经或可能会对公司造成重大影响的账外安排。披露的内容应包括管理层对这些安排的商业目的与对公司的重要性等方面的讨论、以及相关的收入、费用、现金流以及任何可能造成安排改变的已知事项。
- 合约义务 — 公司要以表格的形式对公司截至最近的财务年度终止日所承担的所有合同责任、长期债务与融资租赁义务的最低还款额、经营性租赁义务、收购义务以及其他长期负债予以披露。上述的各项义务的相关支出应按照一年以下、一年至三年期、三年至五年期和五年以上的支付期间进行划分。
- 非公认会计准则的财务指标 — 投资者普遍都对上市公司的一些财务指标数据有浓厚的兴趣，也依照这些数据来评价公司的业绩，但是有些财务指标数据在传统会计学里是没有明确的定义的，例如扣除利息折旧摊销的税前利润、用途不受限制的营运现金流等。有鉴于此，美国证监会颁布了《G法则》，要求公司在公开发布一些非公认会计准则定义的财务指标的同时必须披露下列内容：(1)最具有直接可比性的公认会计准则的财务指标；(2)按非公认会计准则的财务指标与最具有直接可比性的公认会计准则的财务指标的调节；以及(3)解释为什么管理层认为非公认会计准则的财务指标比最具有直接可比性的公认会计准则的财务指标更能够表达公司的经营业绩。《G法则》还规定，在披露非公认会计准则的财务指标以及相应的其他数据信息时，不得错报或漏报，对投资者造成误导。

其他在注册文件中要求披露的内容还包括但不限于：

- 法律诉讼；
- 董事的名单；
- 高层管理人员和咨询顾问；
- 股票发行的具体信息；
- 公司的历史和发展；
- 安全港披露；以及
- 各种有关公司的附加材料和法定信息。

美国证监会对注册文件的技术性要求

下列是美国证监会的一些重要法令、规则和注解，记载了美国证监会对注册文件的格式和内容的具体规定，包括对财务报表的要求和其他财务信息披露的要求等。

- 《S-X法令》— 是美国证监会发布的主要会计法规。该规定要求公司向美国证监会按时提交财务报表，并对报表的格式和内容作出了具体的规定和指导。
- 《S-K法令》— 是美国证监会对对注册文件非财务报表部分（又称为文件的「前面部分」）的规定。法令还包括美国证监会为一些行业作出的特别披露指引，例如适用于石油与天然气业的《指引2》、适用于银行业的《指引3》等。
- 《财务汇报公告》— 记载了美国证监会对当今的会计准则、审计准则和其他有关上市公司信息披露的实务操作的观点和立场。《财务汇报公

告》起了修改或解释当今的会计和审计问题或财务报表披露相关的规定的作用。

- 《会计师官员会计公报》— 以问答方式把美国证监会会计师官员对当今的财务报告准则或有关解释和实务操作的看法记录下来。需要注意的是，尽管有些新的公报尚未得到美国证监会的正式批准成为文献，但上市公司仍应遵守这些草拟公报的要求。
- 《S-T法令》— 美国证监会要求向其注册的上市公司使用其电子数据收集、分析和调取系统(EDGAR)申报注册文件或提交其他档案。

尽职调查

尽职调查主要是指在起草招股书和路演阶段，承销商核对在招股书中披露信息的准确性和完整性，旨在保证向投资者披露的信息没有重大遗漏或误导。可以想像，万一招股说明书有重大遗漏或误导令致投资者蒙受损失，承销商是有极大的法律诉讼与财务风险的；但是只要承销商可以证明自己对相应信息已经进行过尽职调查工作，则承销商将不对此负有法律上的责任。在进行尽职调查工作的过程中，承销商与其代表律师需要独立审阅所有已经披露信息的基础资料或支持文件，故此，尽职调查也同样起到保护公司和管理层的作用。

作为尽职调查工作的一项重要环节，承销商会向公司的独立会计师要求出具告慰函。独立会计师出具的告慰函一般有两封：一封在公司与承销商签定承销协议书后(一般为招股定价日)即日发出；另外一封在公司完成招股计划后、收到集资金额前(一般为正式挂牌上市日)发出。独立会计师需要按照承销商的要求，依据上市公司会计监管委员会所颁布的审计准则就对公司进行的审计和在招股说明书中披露的相关财务资料进行一定的工作和说明。

一般来说，承销商向独立会计师就告慰函提出越多的要求，出具告慰函的时间和成本对公司来说就更大。为了更好地控制上市时间表和避免在告慰函工作上出现不必要的误会，公司应该与其承销商和独立会计师在起草招股书的早期就开始仔细讨论承销商对告慰函工作的要求。

持续报告要求

一般来说，中介机构都会建议计划在美国进行上市的公司应从招股上市前两年起开始准备遵循美国证监会对上市公司的各项要求。该时间表使得公司能够逐步适应美国证监会的报告要求、熟悉申报的内容及了解合规的成本及《萨奥法案》404条款的要求等。这种准备工作还应该包括积极进行投资者关系管理，通过与分析师、投资者和金融媒体保持经常的沟通，确保各方对公司的报导准确无误。

对在美国上市的公司来说，下面列出了一些比较重要的报告要求：

审计委员会

美国证监会要求所有上市公司成立审计委员会。审计委员会应包括三到五名成员。该委员会的规模应取决于公司的规模以及公司业务的复杂程度。

审计委员会的职责包括：预先批准由会计师提供的审计及非审计服务，审计师就公司选择重大会计政策的理由的报告，监督审计服务，包括指定会计师以及决定审计费，解决管理层同会计师之间就财务报告的分歧等。

《萨奥法案》要求审计委员会的每位成员均独立于管理层，并建议至少有一位成员是一名「财务专家」。

依照《萨奥法案》组建的独立的审计委员会将只能从公司接受作为董事的费用。独立的审计委员会成员不能从公司接受其他任何形式的报酬，也不能同公司或其子公司有任何关联关系。董事会必须熟悉公司股票所在的交易所或股票市场的各种新规定。

为了满足作为「审计委员会财务专家」的要求，该审计委员会成员必须了解经济和会计原理，理解财务报告和会计上的选择将如何影响公司的财报，并了解内部控制和流程。根据《萨奥法案》和美国证监会的规定，公司必须披露「审计委员会财务专家」的人数和姓名，如果审计委员会未设财务专家，亦必须披露原因。

对于准备公开发行的公司，规定要求在上市时审计委员会必须至少拥有一名独立成员。在上市后的90天内独立成员应达到多数，在上市后的一年内，审计委员会应完全由独立成员组成。对于在美国上市的外国公司，在「关联关系」

方面的限制亦有所放松，即允许有特定关联关系的人士成为审计委员会成员。

美国证监会年度申报的要求

一旦在美国的证券市场正式挂牌交易，上市公司如果符合美国证监会对境外私有发行商的定义，须在每个财务年度结束后六个月内向美国证监会以20-F表进行年度申报。

为更好地向投资者提供相关财务信息，美国证监会于2008年9月通过修正案，加快年度申报的截止日期。境外私有发行商中的中型和大型加速申报企业，在三年的过渡期后，从原来的财务年度结束后六个月内申报改为四个月内申报。境外私有发行商必须在资产负债表日为2011年12月15日或以后的首个财政年度开始遵守此规定，加速提交20-F表年度报告。

20-F表的申报内容（包括公司业务经营和财务管理状况的讨论及展望与会计报表等披露）都与公司在F-1表申报过的内容相似。另外，境外私有发行商还必须持续提供F-1表中申报过的某些与业务相关的其他信息，包括：

- 董事、高级管理层和顾问的身份；
- 有关上市公司的财务状况、股本和风险因素的关键信息；
- 与公司相关的其他信息：包括对业务、产品及服务、未来业务计划的描述；
- 有关董事、高级管理层和员工相关的信息：包括向公司董事和行政人员、公司内部的监督或管理机构成员支付的薪酬。如果单个人员的薪酬信息不便公开，可把薪酬总额按职位性质分开列示；
- 有关公司与主要股东及其他关联方的交易。

除每年需要向美国证监会申报20-F表外，当上市公司在其业务所在地或美国以外的其他证券交易所公布任何有关公司的重要消息时，又或者按照当地的法规要求向股东发布任何有关公司的重要消息时，上市公司还需及时向美国证监会递交6-K表公告。

例如，如果公司在本地股票市场上发布依据本地会计准则准备的中期财务报表（如季度报告），则需要以6-K表的形式申报。

美国证监会于2008年2月提议要求境外私有发行商在其20-F表中提供重大收购中被收购公司过去三年独立财务报告及模拟财务信息。重大收购是指收购资产超过合并资产的50%的收购。公司在准备其20-F表时应咨询其会计师以了解最新的申报要求。

纳斯达克中期申报要求

纳斯达克要求非美国本土注册的上市公司在第二个财务季度结束后六个月内通过新闻公告发布中期资产负债表和半年期损益表，并以6-K表格对上述内容向美国证监会进行申报。根据该项规则，申报内容须翻译成英文，但不一定要与美国公认会计准则下相应的数额进行调节。该项规则对于2006年1月1日之后结束的中期开始生效。

《萨奥法案》的合规性要求

针对发生的几大财务丑闻，《萨奥法案》于2002年7月30日经美国国会通过开始正式生效。《萨奥法案》是对美国证券法的一项重要改革，并对有关审计委员会、管理层和审计师之间的关系以及他们如何履行各自职责的规定进行了重大修改。

《萨奥法案》对上市公司产生了重大的影响，在多个重要方面对美国所有的上市公司的财务报告有著深远的影响。对境外私有发行商而言，《萨奥法案》302条款要求上市公司的首席执行官和首席财务官分别为公司的20-F表年度报告中所包含的财务信息和其他信息作出个人的声明。《萨奥法案》404条款要求上市公司的首席执行官和首席财务官分别在报告中作出个人声明：他们负责建立和维护对财务报告的内部控制体系，并设计或安排他人设计上述的内部控制程序，以确保财务报告及按美国公认会计准则编制的对外披露的财务信息的可靠性。

《萨奥法案》要求公司的独立会计师除对公司的会计报表是否公允地反映公司的财政状况发表意见之外，还须执行独立的测试程序，就管理层对公司的内部控制的评核及内部控制系统的有效性发表意见。一直以来，对于小型上市公司（市值在7500万美元或以下）满足《萨

奥法案》404条款的要求被一再的延期。2010年通过的《多德-弗兰克法案》的通过使小型上市公司最终豁免了该条款的要求，不再需要审计师对其财务报告内部控制的有效性发表意见。但这些公司的管理层仍要符合《萨奥法案》的要求，对财务报告的内部控制体系进行评估和报告。

目前，上市公司自从向美国证监会登记注册起第二次呈报年报时就需要遵循《萨奥法案》404条款的规定。应提请注意的是，为了满足《萨奥法案》404条款的合规性要求，公司必须在整个财务年度内一贯地、有效地符合《萨奥法案》404条款的要求。因此，在近两年内准备成为美国上市公司的企业应尽早做好准备，确保符合这些新规则的要求。

就《萨奥法案》302条款管理层须进行的声明

《萨奥法案》302条款要求上市公司的首席执行官和首席财务官分别根据他们所知的信息作出以下的个人声明，并作为附件与年度和季度报告一并向美国证监会申报：

- 年度和季度报告不包含对任何重要事实的不实陈述，或者遗漏任何重要的事实；已经披露的信息不会引起投资者对年度和季度报告中内容产生误解；
- 报告中所包含的会计报表及其他财务信息在所有重大方面均公允地反映了上市公司在报告期间的财务状况和经营成果；
- 首席执行官和首席财务官负责设计和维护信息披露的内部控制和程序、关于财务报告编制的内部控制的任何变动或其存在的任何缺陷已经向审计师、董事会和审计委员会完整地披露。

就《萨奥法案》906条款须披露的声明

《萨奥法案》906条款规定，当上市公司向美国证监会申报的文件中包含年度或季度财务报表时必须另附一份由首席执行官和首席财务官（或同等职位的管理人员）出具的书面声明作为注册文件附件与年度和季度报告一并向美国证监会申报，其中表明：

- 该报告完全遵循各项美国证券法的相关规定；
- 该报告中所含的信息在所有重大方面均公允地反映了上市公司的财务状况和经营结果。

《萨奥法案》906条款旨在针对管理层故意或恶意地作出虚假声明，并在发现虚假声明时可以有法律依据对首席执行官和首席财务官作出个人的刑事处罚。该声明是对相关年度和季度报告的正式申述。

《萨奥法案》404条款下的报告

《萨奥法案》404条款关于合规性与管理层对公司财务报告系统相关内控的评估可能是《萨奥法案》中对管理层最大的要求。它要求大多数在美国上市的公司与其独立会计师就与公司财务报告相关的内部控制系统的有效性进行申报。在一般情况下，根据公司的规模，复杂性以及公司在上市日已存在的财务报告内部控制系统，《萨奥法案》404条款需要的准备时间通常为9至18个月。虽然第404条款已经存在很多年，首次上市的公司总会面临著非常相似的挑战。

公司的内部控制报告必须包含以下信息，并包含在其20-F年度报告中披露：

- 陈述管理层建立和维护必要的财务报告内控系统的责任；
- 在最近一个财务年度结束时，管理层对公司财务报告内控系统的有效性进行了评核，并出具意见；
- 描述公司用于评核财务报告内控系统有效性的框架；
- 对年度报告中的财务报表进行审计的独立会计师发表有关管理层对财务汇报内部控制系统的有效性评核的鉴定报告。

《萨奥法案》404条款的合规性测试包括：公司对自身的内部控制系统与程序进行记录、管理层进行的测试和后来独立会计师的审计程序。这是一个非常耗时和繁杂的过程。为了符合《萨奥法案》404条款的合规性要求，在美国证监会注册之前进行妥当与周全的工作计划是十分重要的。公司应向其独立会计师咨询有关《萨奥法案》404条款的具体要求，以便计划下一步的工作。

XBRL

从2009年1月起，美国证监会开始要求公司以交互式数据格式提供财务报表，其目的是更有效的提供对投资者有用的财务信息。运用此格式，财务报表的资料可被直接下载到电子表格，以便利用现成的商业软件进行财务分析，也可方便的转换为其他软件格式。该规则将适用于所有按照美国公认会计准则编制的财务报表的美国本土上市公司和境外私有发行商，和按照IASB颁布的国际财务报告准则编制的财务报表的境外私有发行商。公司将以交互数据格式(XBRL)在美国证监会和企业自身网站上发布其财务报表。新规则的目的不仅要让投资者更容易地分析财务信息，也协助监管机构进行商业自动化信息处理。交互式数据格式能增加财务报表的精确度，公开性，及时性及可用性，并最终降低成本。

绝大部分使用美国通用会计准则的大型快速申报公司已提交用交互式数据格式披露的财务信息。从截止于2011年6月15日或之后的财务报告期的财务报告开始，其他采用美国会计准则的发行人和采用IASB所发布的国际财务报告准则的境外私有发行商也将被要求以交互式数据格式提供财务报表。

会计师在上市过程中的角色

独立会计师(通常指审计师)

一家公司的独立会计师将会在整个上市登记过程中扮演重要的角色。我们将讨论对独立会计师的要求，及其在上市登记过程中的作用。

独立会计师的要求

要满足作为独立会计师的条件，该独立会计师必须向美国上市公司会计监管委员会登记注册。

美国上市公司会计监管委员会是根据《萨奥法案》设立的一个非官方非牟利的机构，直接受美国证监会的监督，负责对上市公司的审计师与其工作进行监督。其设立的主要目的是推动会计业内发展出信息更丰富、资料更准确的独立审计报告，从而更好地保护投资者权益和维护公众利益。上市公司会计监管委员会还负责制定最新的审计准则、设立审计工作的质量控制标准以及监督独立会计师的职业道德和专业独立性等相关工作。

一般而言，任何一家想为美国上市公司提供审计服务的会计师事务所都需要向上市公司会计监管委员会登记注册。上市公司会计监管委员会并没有限制注册会计师事务所设立与经营的所在地，不论是不是在美国本土设立的会计师事务所，都可以向上市公司会计监管委员会登记注册。但是，一旦向上市公司会计监管委员会进行注册，会计师事务所将需要接受委员会的监督检查；对于为100家或以上美国上市的公司提供审计服务的会计师事务所，委员会将对其工作质量进行每年一次的检查，而对于为100家以下美国上市公司提供提供审计服务的会计师事务所，检查的频率则为每三年一次。另外，美国证监会授权上市公司会计监管委员对向其注册的会计师事务所以及上市公司展开调查，并可对其违规行为进行纪律性处罚。

因为美国公认会计准则与其它国家的会计准则一般差异较大，加之美国证监会所制定的财务信息披露要求全面而严格，虽然有很多会计师事务所都可以提供审计服务，公司在选择独立会计师时应考虑其对公司行业的了解程度、在国际资本市场的经验和声誉、帮助外国公司进入美国资本市场的经验多少、以美国审计准则进行审计的经验和对执行美国会计准则的实际工作经验多少而确定聘请哪家独立会计师事务所。

上市公司与其独立会计师之间的关系主要由美国证监会以及上市公司会计监管委员会来管理，而且有些要求在上

市公司的本国可能并不适用。需要考虑的事项包括：

- 会计师与美国证监会注册文件之间的关联 — 虽然独立会计师会对上市公司的财务报表以及根据《萨奥法案》的要求对上市公司的内部控制发表意见，但是管理层仍然对所有要向美国证监会申报文件的内容与披露信息的准确性负最终责任。
- 会计师对上市公司违法行为的报告 — 美国证监会要求独立会计师必须向其汇报发现有关上市公司未予改正的违规违法行为。
- 会计师的独立性 — 美国证监会对所有美国上市公司与其独立会计师之间的关系制定了严格的独立性要求。这些要求不但适用于美国注册的本土公司，也同等适用于境外私有发行商。

对公司而言，对独立性的考虑要求公司在接受由独立会计师提供的所有审计和非审计服务以前，必须获得审计委员会的批准。

对独立会计师而言，还包括以下要求：

- 非审计的服务 — 独立会计师不能向上市公司提供某些非审计的服务，主要是一些有损会计师独立性的服务或超出会计师专业领域的服务。这些服务包括：记账服务、设计财务信息系统、评估或估值服务、对公司股东入资出具公允性意见、精算服务、内部审计外包服务、人力资源管理服务以及其他代理行使管理层职能的服务、投资顾问或投资银行业务服务和法律咨询服务等。
- 项目合伙人的轮换 — 项目合伙人是一个审计工作项目的最终负责人；为了确保审计工作的整体独立性，项目合伙人一般不可以向同一客户连续提供超过5至7年的审计服务。
- 冷却期 — 如果在审计工作开始前的一年内，上市公司聘用曾于上年度参与审计该公司项目的审计人员担任其管理层(尤其是财务管理人员)，则该会计师事务所将被禁止在当年对该上市公司进行财务审计。
- 与审计委员会的沟通 — 独立会计师须与审计委员会保持良好的沟通，定期向审计委员会汇报审计工作情况和他们在审计工作中注意到的某些事项，包括管理层是否采用合适的会计政策等。
- 合伙人的薪酬 — 上市公司会计监管委员会明文规定审计项目合伙人薪酬的多寡不可取决于是否可以向审计客户推介审计与审阅外的其他非审计服务。

独立会计师对上市公司的审计工作组应包括一名项目复核合伙人对审计工作进行独立复核。此外，为了保证审计工作和审计报告的质量，当独立会计师的审计意见是来自一家非美国注册的会计师事务所时，按照美国注册会计师协会(AICPA)证监会实务处(SECPS)附录K的规定，对审计工作的独立性 、应用美国审计准则和美国会计准则的合理性等方面必须进行额外的质量复核审阅。此审阅应作为审计的组成部分之一。

独立会计师可以为公司提供的主要服务

除了提供审计服务之外，选定适当的独立会计师还会给公司带来其他增值服务。如前面所述，独立会计师的丰富上市项目经验和知识，以及其在拟上市公司当地拥有的适当资源将能够使其为公司提供必要的咨询，以合理减少或避免公司在上市过程中必然会遇到的种种策略性和技术性障碍。

1. 策略性的建议 — 对进入美国资本市场方案提出策略性的建议，并因为审计工作量庞大，可以对注册上市程序与时间表提供现实和具操作性的提议，并确保潜在的问题能够在事先被发现并得到解决。

2. 调配合适的专家 — 调配合适的专家人员辅助公司解决有关美国会计准则的各项会计问题，其中包括区分和解决本地会计准则和美国公认会计准则的不同处理和解决财务信息披露的有关问题，帮助公司理解美国证监会对某些会计处理的特别要求等。另外，有经验的会计师会根据以往审计和操作美国公认会计准则的经验向公司及时地提出关键的会计处理问题并协助公司改良财务信息披露的透明度，有助于上市注册文件的顺利申报。

除此以外，独立会计师还将在下列领域为上市过程提供服务：

1. 财务报表审计 — 对公司的财务资料进行审计。审计是公开发行中极为复杂和关键的一环，如果会计师与公司有较长期的审计关系，这将使得会计师对公司的业务和财务历史有深刻的了解，能够加快审计的进度，保证公开发行和上市的成功。
2. 出具告慰函 — 应要求协助券商的尽职调查，包括向承销商出具告慰函。告慰函是承销商律师代表承销商向独立会计师索取的文件。索取告慰函是承销商尽职调查的一项重要环节。独立会计师需要按照承销商的要求，依巡上市公司会计监管委员会所颁布的审计准则就对公司进行的审计和在招股说明书中披露的相关财务数据或陈述进行一定的说明。
3. 审阅招股说明书 — 对公司的招股说明书进行审阅并协助公司解决注册过程中有关会计方面的问题，特别是与美国证监会之间保持通畅的沟通，及时回应美国证管会对招股说明书的审阅意见，保证在最短的时间内使注册成功。美国证监会在审阅拟上市公司提交的上市注册文件时，一般会向公司发出不少于二至三轮的询问函件，要求公司对其招股说明书作出一定的修改。这个过程可能耗时若干周或若干月；而且需要上市公司协同所有的上市中介机构共同努力来完成。

咨询会计师

在过去，上市登记仅仅需要独立会计师的介入。如今，许多公司都另外聘请一家专业会计机构，通常被称为咨询会计师，协助其在上市过程中的财务报告和其他相关事宜。按照美国证监会严格的独立性原则，独立会计师一般不允许为客户直接提供财务信息编制服务。咨询会计师则可用以弥补拟上市公司或其独立会计师在专业技术和能力方面存在的不足。另外，不断复杂的会计要求以及投资者对有用财务信息的较高的披露要求，往往超出未曾面对过上市公司严格的监管和报告要求的拟上市公司所能承受的范围。

此外，随著公司业务的发展，公司的经营结构和交易愈加复杂，而相应的会计处理及要求亦愈加复杂。这使得当今计划在美国上市的公司需要面对更加严峻的挑战。

在《萨奥法案》颁布之后，在美国上市的公司所需的注册合规性工作越来越多了。一套周全的上市计划和各项工作严谨的安排已变成公司可否顺利上市的重要关键。因此，很多计划或已上市的公司会向一些其它不受审计独立性限制的会计师事务所(咨询会计师)寻求会计咨询服务。

咨询会计师可为拟上市公司提供的主要服务包括：

- 提供会计处理的技术咨询 — 咨询会计师可依据其处理复杂资本市场交易的丰富经验，向公司提供会计处理的咨询服务。不论是在招股上市前的重组交易，还是现今业务中的

日常交易都可能很复杂，相应的会计处理也一样。在管理层准备财务报表时，能够深入了解这些交易可能对应的会计处理将非常重要。

- 由于不受独立性要求的限制，您的咨询会计师将能够根据您的特定情况，为您建议适用的会计准则及其应用方法，为您提供各种选择以解决复杂的会计和报告问题。将您的复杂会计问题进行仔细的分析和记录，将非常有助于加快您的独立会计师的审计工作。上市的准备 — 设计和实施内部控制系统程序 —《萨奥法案》404条款对内部控制的记录、测试和报告要求非常具体。任何对外报告方面的内部控制失误都可能造成重大的风险和严重的后果。

咨询会计师能直接协助公司，从事内部控制的设计，文档编制，内控测试和补救工作，以帮助公司满足《萨奥法案》404条款的要求。

- 税务咨询服务 — 随著中国经济的迅速崛起和与全球经济的一体化，现在存在更多的业务机会。企业正面临著国内和国际复杂的税收环境，也需要按照美国会计准则，对不确定税务问题进行财务披露。

为了企业进一步发展或提高生存机会，公司应将提高整体效率作为目标，增加投资者对企业的兴趣或管理企业税务风险。此外，企业需要分析其业务相关的税收成本，以便作出明智的业务决策，实现向投资者作出的承诺。

一个称职的税务顾问可以帮助企业识别和减少税务风险，同时，又可以在上市期间和之后给出适当的税务规划建议，提供诸如上市前的税收健康检查，识别与企业相关的法规变化和对公司税收筹划的有效性进行审查。

最后，员工股权报酬计划，如员工股份期权计划，员工股份奖励计划和员工购股计划，正逐渐成为雇员薪酬中的一部分。税务顾问可以为公司以及雇员提供量身定做的解决方案，设计和实施这些报酬计划以及为这些计划的税务影响提供咨询。

- 交易后续服务 — 越来越多的美国和其他国家的公司都逐渐意识到与合适的会计咨询机构合作的重要性，这种合作能够弥补公司内部资源的不足，借助咨询机构的广泛和深入的经验，以处理诸如股份支付、企业并购、可变利益实体，以及金融工具等各种复杂会计领域的问题。

这种合作使得管理层能够被解放出来，专注于更加重要的经营工作，以提升企业的价值，并在法规要求越来越严格的情况下降低合规性成本。

咨询会计师能够帮助建立会计流程和内部控制，以使财务报告流程更加透明和稳健。此外，咨询会计师还能够就美国公认会计准则和国际财务报告准则的变化提供及时的信息，这将帮助公司提前应对即将到来的改变，而不是事后突然发现问题。

有经验的咨询会计师还能够帮助公司完成下列工作：

- 实施新的财务汇报制度以满足各项对上市公司的文件呈报要求，并就如何遵循这些要求提供持续的技术性咨询支持；
- 提供企业治理的方案供管理层参考；
- 对如何执行新的会计、财务报告和披露标准提出建议；以及；
- 为公司的会计和财务人员提供培训。

结论

作为一家计划在美国上市或已经上市的公司，深入理解当前和未来美国证监会对会计报告及披露要求是非常重要的。作为您的上市团队的重要角色，咨询会计师以及独立会计师都能够帮助您了解这些报告要求，并使您的上市过程更加顺利和成功。

www.pwc.com

把握重点，达成目标

您是否正在考虑上市？在过去的20多年间，普华永道一直致力于帮助中国内地和香港公司应对各种复杂的财务报告、内控及合规问题，并倾力协助它们成功迈向美国上市之路。

无论您所处任何行业，拥有任何目标，与普华永道并肩合作可以使问题迎刃而解。我们助您把握重点，达成目标。

欲了解我们为您提供更多增值服务，请联系我们在北京，上海和香港的团队：

白岚 (北京)
laura.butler@cn.pwc.com
+86 (10) 6533 2363

肖敏 (上海)
min.xiao@cn.pwc.com
+86 (21) 2323 3685

廖达贤 (香港)
kennedy.liu@hk.pwc.com
+852 2289 1881

方蘊萱 (香港)
loretta.wh.fong@hk.pwc.com
+852 2289 1314

pwc

普华永道

5

美国律师事务所的角色

盛信美国律师事务所　陈磊明、林光祥、费大年

关于纳斯达克上市的若干美国法律与监管问题

由盛信美国律师事务所撰写的下一章，详明、务实地概括介绍了美国上市流程，尤以中国发行人为其探讨重点。所涉主题包括：(1)与注册人和外国私人发行人相关的美国证券法律法规及纳斯达克上市规则；(2)文件申报和上市流程及要求；(3)披露及财务资料要求；(4)上市后报告义务；(5)萨班斯-奥克斯利法案和纳斯达克上市规则下的公司治理规定与要求；和(6)尽职调查流程与责任标准，以及其他内容。这一对在美国纳斯达克股票市场上市所涉监管及流程框架的精炼、扼要介绍，对于筹划登陆美国资本市场的潜在中国发行人，将有助益。

美国资本市场对非美国公司而言，是举足轻重的资金来源。截至2010年12月31日，有300多家非美国发行人在纳斯达克股票市场上市，其中包括143家中国公司、18家香港公司、1家澳门公司和6家台湾公司。最近两年，中国公司在纳斯达克上市尤为踊跃，2009年与2010年分别有33家和44家中国公司登陆上市。此外，有超过420家非美国发行人在纽约证券交易所上市，其中包括76家中国公司、2家香港公司和5家台湾公司。许多其他非美国发行人也通过私募发行进入了美国资本市场。本章介绍符合「外国私人发行人」定义的公司，赴美国纳斯达克进行证券首次公开发行（「首次公开发行」）所适用的主要美国证券法规定。「外国私人发行人」指任何根据美国以外的司法管辖区法律组建的发行人，除非：

- 美国居民持有其50%（不含）以上发行在外的表决权证券；且
- 符合以下任何一项条件：
  - 多数行政高管人员或董事是美国公民或居民；
  - 该发行人超出50%的资产位于美国境内；或
  - 该发行人的业务主要在美国境内管理。

适用的主要美国证券法律

《证券法》

《1933年美国证券法》（「《证券法》」）及有关规则和条例，普遍性约束发行人或任何其他主体在美国境内或向美国主体发行和出售证券的行为。《证券法》的主要目标之一，是确保向投资者披露发行人及其所发行证券的重大信息，并为证券投资者作出明智的投资决策提供充分基础。

除非遵守《证券法》所规定的注册和招股书交付机制，或依据豁免规定免于此等注册要求，《证券法》禁止在美国境内或向美国主体发行或出售证券。两项主要豁免规定是《144A规则》（关于向美国境内机构投资者进行私募发行）和《S规则》（关于在美国境外进行的证券发行和出售）。

《证券交易法》

《1934年美国证券交易法》（「《证券交易法》」）普遍适用于公众公司证券在证券交易所和柜台交易市场的二次交易。《证券交易法》及有关规则和条例，要求公司、公司的董事和高管及其他人士，向美国证交会提交定期报告及其它报告，以确保公众能够及时获得充分、最新的发行人信息。

纳斯达克规则

纳斯达克对在其上市的公司规定了若干报告及其它义务，其中包括最低公司治理标准。2002年萨班斯—奥克斯利法案，要求包括纳斯达克在内的交易所强化公司管治要求，特别是与审计委员会相关的要求。

其它适用法律、法规和规定

非美国发行人，还必须遵守《1939年美国信托契约法》中与债务公开发行有关的规定，并遵守《1940年美国投资公司法》，后者规定，如果投资证券在发行人资产中占相当高比例，则发行人不得在美国市场出售证券。其它法律与监管规定包括金融业监管局的规定和美国各州的证券法或「蓝天」法。

美国公开发行证券的注册程序

美国发行人和非美国发行人适用的注册程序，在大多数方面都相同，而且，基本相同的《证券法》要求适用于股本证券和债券的发行。非美国发行人在美国进行首次公开发行，必须向美国证券与交易委员会（「美国证交会」）提交F-1表格形式的注册说明书。

注册说明书的签字人，包括主要的行政、财务和会计高管、至少占多数的董事会成员，以及未在注册说明书上签字的董事，需承担《证券法》项下的潜在责任。

注册说明书将由美国证交会工作人员审查并提出意见，通常需要约30天时间。接著，发行人将提交一份修改过的注册说明书，对收到的评论意见做出回应。对于首次进行发行注册的公司而言，通常需要经过数轮意见评阅。美国证交会审核小组，除包括就一般性披露内容进行评论的律师外，还包括负责评论财务报表和相关披露的会计师。

在妥善处理美国证交会工作人员的大多数意见，并修改注册说明书以反映此等意见后，发行人将准备一份初步招股书，用于证券的初步宣传活动。在完成初步宣传活动并圆满处理美国证交会所有意见后，注册说明书生效，发行人和主承销商将确定证券发行价格，随即可在美国进行出售。

秘密呈交

在美国进行首次公开发行的非美国发行人可以，且通常也会，在正式公开递交前，要求美国证交会工作人员审核该发行人秘密递交的注册说明书文本。注册说明书草稿必须是一份完整的、基本定稿的文件，包含公开递交所需的全部信息，特别是经审计的财务报表。注册说明书的公开递交，通常在解决美国证交会大多数意见后进行，但不得晚于初步招股书印刷之前。首次注册后，美国证交会一般不在保密前提下，审核非美国发行人提交的文件。

披露要求

非美国发行人，在美国进行经美国证交会注册的公开发行时，需满足基本披露要求，这些披露要求列明于就此等发行向美国证交会提交的注册说明书表格中（通常是F-1或F-3表格），此外，在20-F表格中也有此等要求记载。20-F表格既可用于年度报告，也可用于某些《证券交易法》注册说明书。注册说明书和招股书，必须详尽披露发行人、发行人业务、发行条款，以及特定财务报表和发行人的其他财务数据。

规定的财务报表

发行人通常被要求，在构成F-1格式注册说明书一部分的招股书中，列载下述各项：

- 最近二个财务年度的截至年末的经审计合并资产负债表；
- 所提交的最新经审计资产负债表日之前三个财务年度的各年度经审计合并损益表和现金流量表；以及
- 最近五个财务年度的特定财务数据。

虽有这些要求，美国证交会仍允许，根据美国通用会计准则（「美国会计准则」）或国际会计准则委员会(IASB)颁布的国际财务报告准则（「IFRS」）编制财务报表的首次注册非美国发行人，起初只提交最近二个完整财务年度的美国会计准则财务报表和特定财务数据，但按照发行人主要财务报表采用的通用会计准则编制的特定财务数据，仍要求提供完整五年的数据。

未经审计的中期财务报表也可能需要放入注册说明书。根据美国证交会规则，注册说明书中包含的经审计财务报表的最后一个年度，不得早于注册说明书宣告生效前15个月。

非美国发行人一般有以下选择：

- 提供根据美国会计准则编制的财务报表；
- 提供根据IASB发布的IFRS编制的财务报表；
- 提供根据本地会计准则编制的财务报表，并根据美国会计准则或IASB发布的IFRS加以调整；或
- 提供基于IASB发布的IFRS的国别版本准则和其他变更版本准则编制的财务报表，并如上所述，根据IASB发布的IFRS加以调整。

适用的公开宣传限制

一般原则

美国证券法律以允许投资者根据书面招股书和极其有限的其他宣传形式作出投资决策为宗旨。发行人或其它发行参与人，在法定招股书范围之外，作出任何口头或书面通讯或其它宣传，均可能被

视为构成「抢跑」和违反美国证券法律的行为。

如有未经允许的发行行为，美国证交会可强加一段「冷却期」，这将延误交易。此外，美国证交会也可要求发行人在其招股书中，加入关于该发行人的未经允许的公开陈述。任何书面通讯还可能被视为构成违反《证券法》注册要求的招股书。

在自2005年12月起生效、作为证券发行改革组成部分的规则中，美国证交会放宽了对在注册发行时际前后进行的通讯的限制。然而，在首次公开发行情况下，「抢跑」违法行为仍然是一项重要关注内容。

首次发行之前对公开宣传的限制

计划在美国进行首次注册发行的发行人，所应遵守的公开宣传限制的性质，因其准备的状况的不同而有区别。

递交注册说明书之前

一旦开始为发行作准备，在递交注册说明书前，禁止进行任何可能被视为证券「出售要约」的行为。美国证交会对「要约」的定义十分广泛，包括任何形式的、旨在为拟发行证券造市或引起公众兴趣的宣传行为，即使没有作出出售证券的明示要约也不例外。这一期间一直持续到通过美国证交会的EDGAR系统公开递交注册说明书之时。

在注册说明书递交之前，发行人及其他发行参与人，必须普遍避免在美国直接提及拟进行的发行。发行人还应避免任何在美国境内造市的行为，如对其业务、产品、前景或其它方面的任何特别宣传活动。

注册说明书递交之后，正式生效之前

在注册说明书公开递交之后，但正式宣告生效前，继续适用与递交之前同样的美国境内造市活动禁止限制，但例外的是：

- 可作出出售证券的口头要约；及
- 可以初步招股书形式作出书面要约。

在证券发行改革规则正式发布后，还允许使用额外的书面材料，其被称为「任意补充招股文件」，但前提是需符合若干条件。对于非报告发行人或非成熟发行人，法定招股书（如是首次公开发行的初步招股书，必须包含价格区间）通常必须随同或先于任意补充招股文件发布。与发行相关的投资者「路演」会议，一向被视为口头要约，因为，除初步招股书外，不得向出席路演的人士提供任何其它书面材料。

虽然在等候期内允许进行口头通讯，但《证券法》的反欺诈条款仍适用于口头要约。为尽量减少作出之后可能遭受误导指控的口头声明，路演参与方应努力将其陈述的内容，限于初步招股书已包含的或可从中推导出的信息。

注册说明书宣告生效后

注册说明书由美国证交会宣告生效后，可在美国对注册证券进行口头或书面要约以及出售。最终招股书应在此等要约或出售之前或同时交付，但证券发行改革规则引入了「可查阅等于交付」模式，允许将向SEC递交的最终招股书表格（而不是初步招股书），视为最终招股书的交付。如是在美国首次注册和上市，券商将继续就发行的股份提出招股书交付要求，直至发行截止日后25日，因此，发行参与人和美国律师应继续监控和审核与发行人有关的动态和拟进行的宣传安排。

其他安全港规定

除上文讨论的各项外，《证券法》规则下还有若干其他安全港规定，此等规定具体列明了不被视为证券「要约」的活动。此等安全港规定包括：

- 按《规则135e》的规定和条件举行的境外新闻发布会和会议；

- 在正常经营过程中，与发行人以往作法一致，定期发布的事实性业务信息，但受《规则168》中载列的条件约束；
- 关于发行人及其运营的「前瞻性信息」，但受《规则169》对下述发行人规定的条件的约束，即受《证券交易法》报告要求约束的发行人，或初次注册的外国私人发行人，其拥有至少7亿美元的全球性公众持股量或其股权证券在指定海外证券市场交易至少12个月；及
- 根据就《证券法改革》通过的《规则163A》，由发行人或其代表在递交注册说明书30日（不含）之前作出的通讯，此等通讯没有提及属于或将属于注册说明书的对象的发行。此规则要求发行人采取合理步骤，防止任何此等通讯的进一步散布或公开；不过，在美国进行首次注册的非美国发行人，有必要采取审慎态度，并且，如可能，应依赖上述其它安全港规定。

互联网与公司网站

网站上公布的信息被美国证交会视为书面通讯，受前述所有书面通讯限制的约束。为避免公司网站上公布的或链接的信息被美国证交会视为「要约」，在发行之前，非美国发行人不应在其网站上分发任何发行相关文件，创建新网站，或实质性扩大其现有网站。相反，发行人应继续以与过往一致的方式，使用现有网站进行惯常通讯，审查所有信息并删除过时的、不准确的信息，以及任何与发行文件的任何内容相互抵触的信息，并避免使用超链接。

在美国首次公开发行后的报告与其它义务

20-F表格

受《证券交易法》定期报告要求约束的非美国发行人，必须在每一财务年度结束后六个月内，向美国证交会提交20-F表格形式的年度报告。该报告必须提交予该发行人证券上市的任何美国全国性证券交易所。从2011年12月15日或之后结束的财务年度的20-F表格年报开始，非美国发行人必须在报告财务年度结束后的四个月内提交年度报告。

年报的诸多披露项目与萨班斯—奥克利斯法案规定的新要求有关，包括发行人的主要行政高管和主要财务高管的认证要求。

表格6-K

凡提交20-F表格形式年度报告的非美国发行人，还必须向美国证交会和发行人证券上市的任何美国证券交易所提交表格6-K形式的报告。表格6-K报告用于提供以下信息：

- 外国私人发行人根据其住所地或其注册或组建地法律公开或被要求公开的信息；
- 该发行人向交易其证券的证券交易所提交或被要求提交且由该交易所公开的信息；或
- 该发行人向其证券持有人发布或被要求发布的信息，包括新闻稿。

这些材料只有在对于发行人或其子公司具有重要意义时才需提交。表格6-K应在其 所含报告或文件公开后及时提交。

萨班斯-奥克利斯法案和适用于外国私人发行人的公司治理要求

萨班斯-奥克利斯法案及美国证交会通过的有关规则，对根据美国联邦证券法律注册证券的外国私人发行人规定了多项重要的新要求。这些要求包括以下公司治理指令：

审计委员会要求

萨班斯-奥克利斯法案规定了详细的审计委员会要求。由于这些要求是美国全国性证券交易所上市标准的一部分，因而仅适用于在诸如纳斯达克等全国性美国交易所上市的外国私人发行人。此等要求包括：

- 成员必须是「独立」的成员 — 在美国交易所上市的公司的审计委员会，

必须由萨班斯-奥克利斯法案所规定的「独立」董事组成。

- 必备权力和「密告」程序：审计委员会或同等审计机关应：
  - 直接负责发行人所聘用会计师事务所的聘用和监督；
  - 拥有权力和资源，聘用其自身的律师及顾问；及
  - 建立「密告」程序，处理关于会计或审计事项的秘密匿名举报和投诉。
  - 服务的事先批准 — 审计委员会或同等审计机关，必须建立事先批准政策和程序，据此，除有限例外情形外，外部审计师的所有审计和经允许的非审计服务均应事先经过批准。

道德准则

外国私人发行人必须：

- 在其年度报告中，披露是否采用了适用于其高级行政主管和高级财务主管的道德准则，如已采用，须公开此道德准则，且
- 在其年度报告中，或五个营业日内在其网站上，披露对道德准则的修订和豁免规定。

禁止的行为

除其他禁止行为外，外国私人发行人也不得向其董事和行政高管提供贷款或其它信用。

在美国上市的外国私人发行人的其它有关规定

《证券交易法》第13(d)节和第13(g)节项下的报告

《证券交易法》第13(d)节和第13(g)节规定，任何受益所有人，直接或间接持有5%（不含）以上依据第12节注册的类别股权证券的，均负报告义务。视情形而定，报告采用13D或13G表格形式，须提交给发行人、美国证交会及交易相关证券的主要美国证券交易所。此等申报义务是股东的责任，而不是发行人自己的责任。

《反海外腐败法》

《1977年反海外腐败行为法》（「《反海外腐败法》」）规定，凡是证券依据《证券交易法》第12节注册的公司（无论美国公司还是非美国公司），均须设立准确的簿册、记录和账目，并建立和维持内部账目控制制度。《反海外腐败法》还一般性地禁止，向外国官员、外国政党及其官员以及外国政治职位候选人提议、支付或赠与金钱或任何有价值的物品，以求影响该外国官员、外国政党及其官员或候选人的公务行为或决定，或诱导该外国官员、外国政党及其官员或候选人对外国政府或政府部门施加影响，从而协助公司取得或维持与任何人的业务，或为任何人取得或维持业务，或将业务引向任何人。

如果违反《反海外腐败法》，公司、公司的控制人，以及特定情形下公司的董事、高管、雇员或其他代表，将可能受到刑事处罚，包括罚款和监禁，同时还可能受到民事制裁，如美国证交会提起的禁令执法行动。

「非通用会计准则财务指标」的公开披露及《条例G》

《证券交易法》下的报告公司，凡公开披露包含「非通用会计准则财务指标」的重要信息时，应遵守《条例G》的披露规定，但外国私人发行人可获得有限的豁免。《条例G》规定，报告公司公开披露的非通用会计准则财务指标，须同时附有：

- 依据美国通用会计准则（或，如发行人向美国证交会提交的主要财务报告依据当地通用会计准则编制，则依据当地通用会计准则）计算和列示的最具直接可比性的财务指标；及
- 非通用会计准则财务指标与按前述方式计算和列示的最具可比性的财务指标之间的差异调整。

如果符合下列条件，外国私人发行人可免于遵守上述规定：

- 该外国发行人在美国境外的证券交易所或交易商间报价系统上市或报价；
- 非通用会计准则财务指标，不是源

于或基于依据美国通用会计准则计算或列示的指标；以及
- 该披露在美国境外作出，或包含于在美国境外发布的书面告示文件之中。

公众公司的后续发行

2005年12月开始生效的证券发行改革规则大幅简化了后续发行的注册程序，尤其是被称为「知名成熟发行人」(well-known seasoned issuers, WKSIs)的大型报告公司的后续发行。

非美国发行人需满足下列条件：

- 至少有12个月时间，受《证券交易法》定期报告规定约束；
- 以往12个月中，一直及时提交《证券交易法》要求提交的所有报告；且
- 已向美国证交会提交过至少一份年度报告

只要在此等情形下，非美国发行人才会被视为「成熟发行人」，有资格在遵守特定发行要求的前提下，使用F-3表格注册说明书。F-3表格允许通过援引发行人已有的《证券交易法》报告文件，进行大部分公司信息披露，因而简化了发行程序。F-3表格也可用于储架发行(shelf offerings)，其涉及提交一份载明基本信息的注册说明书，分次发行时，提交载明相关发行的具体条款的补充文件即可。

知名成熟发行人，现可使用大大简化的储架注册程序。知名成熟发行人有资格递交「自动储架注册说明书」，提交后立即生效，无需美国证交会的事先审查(但是，自动储架注册说明书，不可用于业务合并或换股要约背景下证券的注册)。新增的其它灵活性包括下述各项：

- 在初始注册说明书中，可推迟确定拟发行证券的数量、拟发行的注册证券在首次发行和后续发行中的分配、售股股东的身份或配售计划的描述；
- 注册说明书递交之后，即可进行分次发行；
- 注册说明书生效后，可通过提交修订书，增设新的证券类别，修订书同样立即生效。

储架注册说明书(包括自动储架注册说明书)应每三年更新一次，具体按美国证交会的关于资格核查时间和标准的规则办理。

一般而言，如果可满足下述两项条件之一，成熟发行人(具备知名成熟发行人资格)即可享受自动储架注册便利：

- 拥有至少7亿美元公众持股量(世界范围内非关联方持有的有表决权和无表决权普通股的总和)，或
- 过去三年中，在按《证券法》注册的初次发行中，除普通股外，发行了本金总额至少达10亿美元、供现金认购(而非用于交换)的不可转换证券。

不过，特定因素也可以让发行人丧失知名成熟发行人资格，例如，未及时依《证券交易法》提交报告，或在过去三年内曾被判定犯有与欺诈、从事受监管金融业务或其他特定犯罪有关的重罪或轻罪。

联邦证券法律下的责任和尽职调查

非美国发行人在美国发行证券，会面临《证券法》和《证券交易法》两个法律下的潜在责任。公开发行中的责任基础要比私募发行中的责任基础广泛得多。

《证券法》

在美国发行证券时，非美国发行人和若干其他主体，可能承担《证券法》第11节和第12(a)(2)节项下的责任，而且，任何被视为发行人控制人的人士或承担《证券法》第11节和第12节项下责任的主体之控制人的人士，可能承担《证券法》第15节项下的所谓「从属」责任。

第11节

根据第11节，如果生效后的注册说明书包含对重大事实的不实陈述或遗漏陈述重大事实，则任何对此等不实陈述或陈述遗漏并不知情的投资者均有权起诉下述各方：

- 发行人；
- 发行人的董事；

- 发行人的主要行政主管、财务和会计高管；
- 发行人在美国的授权代表（如果是非美国发行人）；
- 任何专家（如发行人的独立会计师），如果注册说明书的有关陈述，是基于他的权威作出；以及
- 承销商。

根据第11节，发行人应就注册说明书中的重大不实陈述或遗漏承担绝对责任，且原告不需要证明对特定不实陈述、遗漏或故意行为的信赖，就可以获得赔偿。与此相对照的是，发行人的董事、高管、美国授权代表及承销商，在「经合理调查，有合理理由相信且确实相信」，注册说明书中的陈述真实、完整且无误导时，方可免于承担责任。尽职调查程序，如果妥当进行从而构成「合理调查」，则可在直接保护上述人士、主体免于承担第11节责任方面，发挥重要作用。

第11节仅适用于向美国证交会注册的公开发行，而不适用于在美国境内的《144A规则》私募发行及其他私募发行，也不适用于在美国境外依据《S规则》进行的发行。

第12(a)(2)节

根据第12(a)(2)节，任何购买了证券的人士，均可对通过含有购买人并不知情的重大不实陈述或遗漏的招股书（包括发行人或其代表撰写的、或发行人使用或援引的「任意补充招股文件」）或口头沟通，在州际贸易中发行或出售证券的人士提起诉讼。在首次发行中，尽管事实上是承销商而非发行人直接向购买人「发行或出售」证券，发行人仍应负第12(a)(2)节的责任。第12(a)(2)节下的责任仅适用于在购买人根据合同有义务购买证券之前或之时向其传递的信息，而不考虑在购买人根据合同有义务购买证券之后向其传递的信息。被告可以通过证明，其「不知道，并且在行使了合理注意后也无法知道招股书或口头沟通中的此等不实陈述或遗漏」，而免于承担第12(a)(2)节下的责任。美国证交会认为，第12(a)(2)节所要求的「合理注意」义务的严格程度，低于第11节的「合理调查」义务。

尽管第12(a)(2)节并未明文规定，它只适用于在经美国证交会注册的公开发行中出售的证券，最高法院1995年的一项判决(*Gustafson v. Alloyd Company*)限制了该节在《144A规则》私募发行及其他私募发行和二级市场交易中的适用。

第15节

根据第15节，任何人士如果控制负有第11节或第12节项下责任的任何人士，则该人士应「与被控制人连带且在相同责任范围内」，向被控制人对其负有责任的人士承担责任。然而，依据第15节，如果控制人「并不知道或并没有合理理由相信，存在作为指控被控制人负有责任之依据的事实」，则控制人即无责任。美国证交会将「控制」定义为，「通过有表决权的证券、合同或其他方式，直接或间接地掌握有指导或责成他方指导另一主体的管理和政策的权力」。

《证券交易法》

非美国发行人和某些其他主体，也可能因在美国进行的证券发行，或与美国有管辖联系的证券发行，而承担《证券交易法》第10(b)节项下的责任。已将其证券向美国证交会注册的非美国发行人，也可能因向美国证交会提交的定期报告而承担责任。此外，非美国发行人的控制人可能须承担第20(a)节项下的从属责任。

第10(b)节和《规则10b-5》

《证券交易法》第10(b)节禁止在任何证券的买卖中，使用「任何违反[美国证交会]可能颁布的规则和条例的操纵性或欺诈性手段或措施」。美国证交会依据《证券交易法》制定的《规则10b-5》禁止在任何证券的买卖中，使用「任何手段、计划或技巧进行欺诈」，作出「任何对重大事实的不实陈述」，或遗漏「考虑到作出陈述时的情形，使陈述不具误导性而需要

陈述的重大事实」，或从事用于或会用于欺骗任何人士的「任何行为、做法或业务过程」。

向美国证交会注册的公开发行使用的招股书（包括任意补充招股文件），以及《144A规则》私募发行、其他私募发行甚至是美国境外依据《S规则》进行的发行使用的发行文件，如有重大不实陈述或遗漏，都可能带来第10(b)节和《规则10b-5》项下的责任。任何公开声明（例如新闻发布稿），或向美国证交会提交的任何文件，包括非美国发行人依据《证券交易法》向美国证交会提交的定期报告，如果含有重大不实陈述或遗漏，也可能导致责任。

经法院解释，《规则10b-5》要求原告证明：

- 被告作出了重大事实的不实陈述或遗漏陈述重大事实；
- 被告为故意；
- 原告合理信赖了此等不实陈述或遗漏；
- 不实陈述或遗漏与证券的买卖有关；且
- 此等不实陈述或遗漏是导致原告损害的近因。

《规则10b-5》项下的责任通常比《证券法》第11节或第12(a)(2)节项下的责任更难证明，对《证券法》第11节或第12(a)(2)节项下的责任，无需证明故意或信赖。

第20(a)节

《证券交易法》第20(a)节规定，任何人士，直接或间接控制依据《证券交易法》任何条款或其任何实施规则应承担责任的任何人士，则应与被控制人在相同范围内承担责任，除非控制人善意行事，而且没有直接或间接地诱发构成违法行为或诉由的行动。第20(a)节对抗辩所要求的控制人的注意标准低于《证券法》第15节。

首次公开发行中尽职调查的目的和性质

对发行人进行尽职调查，是准备在美国发行证券过程中重要的一环。基于诸多商业和法律理由，发行证券时通常进行尽职调查。尽职调查可以让主承销商更深入了解发行人，以决定是否值得推进交易。一旦决定继续进行交易，尽职调查可协助承销商确定发行的结构、条款、招股书披露及营销策略。尤其当发行人是非美国发行人时，尽职调查程序将有助于发行人、承销商及其各自的法律和其他顾问查明商业、法律或监管问题，或与发行人或其商业环境相关，可能影响发行或需在发行材料中做出特别披露的特殊风险因素。

进行尽职调查的第二个重要原因是，它让承销商及参与发行的若干其他各方（但不包括发行人），可对联邦证券法的责任条款（包括《证券法》第11节、第12节和《证券交易法》第10节）提出抗辩，同时也让他们可以对若干州证券法的类似责任条款提出抗辩。

前文已对此等抗辩作出较充分的讨论。

尽职调查通常包括：

- 与发行人的主要董事、高管、雇员、控制人及其独立会计师的访谈；
- 对发行人的公司和财务记录、重大合同及财务报表的全面审查；
- 对与发行人及其关联方相关的公开信息源及信息数据库的查阅；及
- 在某些情形，与第三方（如重要银行、客户或供应商）的访谈，以及，如适当，还可访问了解该公司的政府官员。

在各个尽职调查环节，要重点关注发行人的业务、财产、财务状况、经营业绩和前景。

美国存托凭证方案

很多非美国发行人选择以美国存托凭证的形式在美国发行股票。每一美国存托凭证代表非美国发行人的特定数额的股份，此等股份已根据存托协议的条款，交存于保管人。依据存托协议持有、由美国存托凭证代表的股份，被称为「存托股份」、「美国存托股份」或「全球存托股份」（由「全球存托凭证」代表）。

美国存托凭证是对依据存托协议条款持有的特定证券的凭证。依据上述安排持有的存托股份本身，被视为新创设的证券，其独立于发行人发行的基础股票。通常使用表格F-6，对由美国存托凭证代表的存托股份，进行《证券法》项下的注册。

SIMPSON
THACHER

“他们的服务，是本土资源、客户认知、
美国法律睿识的完美融合。”

CHAMBERS GLOBAL 2011
CHAMBERS ASIA-PACIFIC 2011
客户引言

美国盛信律师事务所是全球顶级国际律师事务所之一。超过125年来，我们一直致力于协助客户驾驭变动不居时世中其面临的最大法律、商务挑战。本所在北京、香港均设有分所，积极投身于中国业务已近二十个春秋。本所的中国业务扎根于我们享誉全球的领先声望、能力和经验。

我们为客户提供全方位的公司法律顾问服务。从公众或私人公司的跨境并购，到合资企业创设，从国际资本市场交易，到私募股权客户的战略投资和基金设立，我们均具备广博精专的执业经验。我们还从事杠杆和收购融资业务，并代表中国客户策应美国诉讼和国际仲裁。对每一件受托事务，对每一位客户，我们的目标始终是，提供全球最高品质的法律服务。

纽约
北京
香港
伦敦
洛杉矶
帕洛奥图
圣保罗
东京
华盛顿特区

北京
中国北京建国门外大街1号
国贸大厦39层3919室
邮编：100004
+86-10-5965-2999

香港
香港中环花园道3号
中国工商银行大厦35楼
+852-2514-7600

纽约
425 Lexington Avenue
New York, NY 10017
+1-212-455-2000

www.simpsonthacher.com

美国盛信律师事务所

6

投资者关系战略伙伴在首次公开招股(IPO)过程中的角色和重要性

Ashley Ammon De Simone, ICR 亚洲主管，董事总经理

Jeremy Peruski (解瑞明)，高级副总裁

Wen Lei Zheng (郑文蕾)，副总裁

一个投资者关系战略顾问应该具备第一手的资本市场经验。在IPO发行前后，投资者关系顾问应该重点保证公司信息流的连贯性、保守而精准的发展战略和有序的投资者互动。这些因素将极大地影响IPO的成功发行和发行人在资本市场的长期表现。

摘要

首次公开招股(IPO)是一个公司运营周期中最令人兴奋的事件之一，如何最好地着手进行IPO也通常产生许多问题和不确定性。怎样的投资银行组合是最佳的选择？公司应该采用「联席簿记」或「共同承销」的模式？公司的规模是否已达到上市要求？公司应该如何定位？应该呈现怎样的财务模型？一旦上市，应该呈现什么样的行业指标？是否应该以及如何提供盈利预测的指导？哪些信息可以知会投行？同等的信息是否可以知会股票分析师？问题不胜枚举。

发行人通常忽略的一个关键问题是，一旦IPO交易结束、公司正式成为上市公司，接下来会发生什么。当IPO活动喧嚣落幕，公司应采取什么样的长期战略以保证与投资者有效互动，保持在华尔街适当的曝光度，管理市场预期，并最终提高股东价值和避免股东诉讼风险？

一个有经验的投资者关系(IR)顾问，即一个有深厚的资本市场经验和公正客观角度的顾问，在这个时候对于公司来说十分关键。这样的顾问可以完全以公司管理层的利益为基础，回答这些问题。从公司上市前，上市后至承销团完成交易后的很长一段时间内，这样的顾问应当在保持公司信息的连贯性上充当先锋。

决定，决定：如何权衡多方建议

发行人在上市过程中通常被各方意见所包围。风险投资和私募基金人士从他们股权投资的角度提供建议。董事会成员对于公司营运有著许多看法，但可能没有与投资者直接互动的经验。股票研究分析师必须不受交易影响，就公司本身提出独立的意见，而投资银行家则必须尽其所能为他们的发行人客户和投资人客户执行一个成功的交易。投资银行家们必须在这个局面中划清一个关键而微妙的界线。

各方重要的声音不绝于耳，但无论是投资者、董事会成员、分析师或银行家都就其角色不同，而有自己的观点和动机。

所有这些建议都可以使发行人难以做出基本的沟通决策，包括以下问题：

- 应该向投资者呈现怎样的增长率(以显示公司投资机会的规模和吸引力)？
- 在讨论未来发展的时候应该划定怎样的时间范围？
- 应该告知投资者公司短期内有什么样的起点可作为未来的标杆，比如产品获得审批，待定新合同，工程竣工或并购活动？
- 应该给予什么样的盈利预测指导或承诺？
- 管理团队中哪些成员可以代表公司发言？
- 应当向投资者呈现哪些分部门？
- 从估值和运营的角度，应该引用哪些同业公司的例子？

往往公司花费数日甚至数周在商讨F-1登记声明中的条款内容(这些内容对上市是否成功或上市后的表现如何可能并没有影响)，上市过程中许多真正最重要的决定和评价标准却没有得到重视。

投资者关系战略伙伴应该帮助公司重视、并有效地处理对成功上市及上市后12至24个月资本市场表现两方面都非常关键的领域。最基本的是，公司要能够妥善地管理期望，超越并提高预测范围，向投资者和分析师推销和定位公司的故事，这些都是投资者关系能够发挥正面影响的领域，而这些领域对管理层长期的公信力和市场估值都有重大影响。

往往许多IPO发行人重金聘请最好的投资银行家、审计师和律师，却聘请不懂得财经沟通对长期估值有所影响的公关公司或营销公司。在上市过程中聘用一流的投资者关系服务公司的成本与聘用投行、会计和律师的费用相比其实是微不足道的，然而与投资者关系相关的决定却可以影响数百万美元的市值和估值。

中国式的困境

在美国发行IPO对于来自中国的公司来说尤其是一个独特的挑战。通过与有经验、有能力应对这些挑战的投资者关系

顾问合作，公司将能获得一个全球团队提供地域和行业范围内的支持，管理层才能够熟练地驾驭复杂的上市过程。

中国的发行人面临的典型困难包括以下几个方面：

- 上市地点的选择 — 投资者往往希望知道为什么一个中国的公司选择在美国上市，而不是更近的交易所。上市的标准、品牌、成本和估值都必须考虑到，从投资者关系的角度看来，每个因素都具有特别的意义。
- 审计师的选择 — 投资者会从发行方的交易团队来评估这支股票。审计事务所的选择、以及审计协议和人员地点都至关重要。此外，一旦IPO完成，公司就要一直保持其作为上市公司的状态，每年进行四个季度财报都要花费大量的时间和费用。对审计师的选择一定要以投资者的偏好和所关心的问题为出发点，而非仅仅是基于价格。
- IPO之后的时间管理 — 投资者将在路演中与管理团队见面，并对IPO之后他们将与谁沟通有所期待。一个有效的投资者关系策略应该优化管理首席执行官(CEO)和／或首席财务官(CFO)在日常工作和与国内及海外投资者会面之间的时间分配。从召开不同时区的电话会议到花费时间与差旅费用参加跨洲的行业会议，中国公司往往会遇到时间管理和出差的难题。因此需要在IPO之前就做好时间管理，以便于能够在路演中有效安排投资者的会面要求。
- 董事长的参与 — 中国公司往往必须在IPO之后对公司创始人的角色进行转变，决定这个人是否依然活跃在公司日常运营、向董事会与投资人负责，或退居非活跃的角色。这一决定对投资者关系有非常大的影响。

发行人对于投资者关系团队的选择会对上述问题产生重大的影响。归根结底，管理曾在理解投资者的偏好、资金成本及有效的时间管理的基础上做出一个选择是十分重要的。

投资者关系战略服务对提升IPO过程的作用

从IPO的启动到结束，投资者关系战略服务能够在以下几个重要方面发挥协助作用：

- 投资银行的选择；
- 组织会议的筹备工作；
- 分析师宣讲会的准备工作；
- 财务模型的制定和解释；
- 路演准备工作，包括Q&A准备工作；
- 披露业务指标和业务信息；
- 演讲稿培训；
- 数字媒体宣传；
- 搭建投资者关系基本框架；
- 二级市场的投资者关系战略服务；
- 组建一个有凝聚力的投资者关系团队，或者内部，或者外部，或两者兼备。

选择承销商

对于一家私营公司而言，选择承销商是最重要的决定之一。ICR在IPO过程中的这一阶段与客户进行方面密切协作。首先，ICR通过买方联系人获得业内最新的对投行的评估；然后对最有可能就发行方公司发表研究报告的卖方分析师进行尽职调查。

研究分析师在IPO过程中已经不像过去那么活跃，但是他们的工作仍然可以决定一个交易的成败，并对上市后二级市场支持至关重要。因此，私营公司十分有必要从以下几个方面认真评估研究分析师。首先，该分析师是否对公司故事充满热情？当我们听说有些公司在没有见过分析师或与分析师见面后没有碰撞出任何火花的情况下，就选择了该分析师所在的投行感到吃惊。因为是分析师，而不是投资银行家，才会在以下方面发挥重要作用：

- 作为讲述者向机构销售团队讲述公司的故事；
- 创建公司的财务模型；
- 聆听买方／销售团队在路演期间的问题；
- 在IPO之后为公司撰写报告。

我们看到越来越多IPO之所以失败，主要是因为他们的分析师是由一个超大型投行的非资深分析师和一个来自其它承销商的对该公司故事缺乏热情的资深分析师的组合起来。还有一些情况是我们看到分析师对股票给与「中立」甚至「卖出」评级，即使股价已跌破了发行价 — 鉴于买方知道卖方分析师了解IPO过程中的更多内幕，这样的评级影响相当重大。

经过与研究分析师一段时间的关系培养，了解到哪些才是真正理解并支持公司的基本立场之后，下一步的重要工作就是与投资者关系顾问一起在买方进行独立调查，了解买方会用哪些卖方分析师的分析结论作为衡量某一行业的参考。一位分析师可能对某一公司有偏好，但如果买方并没有人会参考这个分析师的报告，那么就要考虑是否雇用这家投行(或至少考虑这家投行能够从本次发行交易中获得的收益比例)。

在对投行进行所有相关因素的尽职调查之后(即投资银行家、分销能力、专业的销售队伍和研究能力)，必须认识到所有的投行都不会仅仅因为他们一直在说喜欢某家公司而接受他们在IPO中的角色。你会发现一些公司不愿意自己的名字排在招股说明书封面上其他公司的「右边」；有些公司不愿意仅仅承担配售商的角色；另一些不愿意仅仅承担联席承销商的角色；有一些因为不是主承销商而不提供最好的投资银行家或研究分析师；一些愿意成为联席承销商，但需要35%的分成；而另一些可能只获得了1%分成，却提供了高质量的研究和后期支持。

原则是，从招股书封面最左边一个名字到最右边一个，公司要紧紧掌握选择的权利。现今一个IPO有四到五个投行承销的情况越来越普遍了，即使这笔交易只有五千万美金的规模。一个参与过许多IPO案例并且熟知投行的投资者关系战略顾问能够帮助私有企业在投资较小的前提下，争取更多的分析师，取得一流的研究报告和二级市场服务。

组织会议和分析师宣讲会

选定了投行之后公司需要着手准备组织会议，紧接著的还有分析师宣讲会。组织会议将包括来自销售、市场推广、服务、研发、业务发展、法律、人力资源和财务等各领域的管理人员直至首席执行官的介绍演讲。

一个独立的有丰富IPO经验的投资者关系战略顾问应在帮助准备这些重要会议中充分发挥作用。组织会议为公司的定位设定了基调，同时也是衡量管理层质量的第一次重大活动。与此同时，公司的销售渠道，预测模式，以及与收入、净利、现金流和增长速度等相关的财务模型也将被进行仔细评估，在各方介绍演讲之后，一些重要的观点也将形成。

组织会议(以及分析师宣讲会)首要考虑的问题就是什么样的信息可以披露。公司应该考虑竞争对手通常披露什么样的指标，什么指标对推进业务至关重要，以及什么样的指标应该在上市后按季度披露。投资者关系战略顾问可以帮助管理团队做出这些决定，而这些决定对于IPO发行十分重要，对上市后的表现尤为关键。

时刻要记住投行在IPO过程中要承担承保的风险，因此，在IPO过程中共享的信息不一定是作为一家上市公司应该披露的。一些与投资银行家共享的信息不需要与分析师共享，一些可以与双方共享但不应该再次披露。投资者关系战略顾问应该作为一个优秀的第三方独立机构，在公司与投行和分析师共享这些信息之前进行审查，因为投行和分析师会用每一条披露的信息对公司和管理层进行估值。

由于这些会议的审议标准高，公司不应该在组织会议和分析师宣讲会前一两天才匆匆忙忙准备会议上的演讲。即便在被批准承销IPO之前，投资银行家和分析师仍需要参加这些会议。在ICR成员过去从事投行和股票研究的经验

中，我们都曾放弃过那些在宣讲业务、销售、渠道及相关财务预测时表现欠佳的公司。这一阶段公司管理层表现不佳除了通常导致IPO偃旗息鼓之外还有其他的后果，比如：

- 投行游说公司考虑出售公司，而不是推行IPO；或
- 顾问们说服公司推迟IPO，却同时青睐其他公司的IPO就因为其他公司管理表现较佳。

组织会议或许是一个轻松友好的环境，但几个星期之后的分析师宣讲会，公司必须将准备程度提高到一个新的水平。信息的详细程度和渠道管理、季度预测和业务驱动等相关的指标程度在本次会议中将要求达到更高水准。公司的责任是让研究分析师对于传播公司的投资故事感到兴奋，并且对于公司的财务模型感到信任。

财务模型

一个有过投行、证券研究和投资者关系方面IPO经验的投资者关系战略顾问才是在展示和沟通财务模型这一阶段的优秀顾问。当管理层面临一个千载难逢的制定投资者预期的机会时，管理层必须要清楚、详细地阐明是什么因素推动了公司过去的发展，又是什么因素将推动未来几个季度或几年的收入和支出，这一点至关重要。

投资者关系战略顾问可以与管理层合作，以确保预期被设置在最适宜(且适当保守)的起始水平。当公司向投行和分析师提出一个模型时，往往不考虑为盈利预测设置一定的缓冲，且这种缓冲随著时间推移需要重新评估、提高。例如，一个「异常年份」往往会被用来确定估值，但由于怕影响相关估值，或由于投行告诉公司需要表现出一定幅度的增长才能对成长型投资者具有吸引力，也许是由于来自风投的压力，或仅仅是因为缺乏IPO经验，公司往往不愿意对其期望实现的增长率打实质性的折扣。

但是，如果公司没有考虑到IPO的特殊时期结束之后支持股价长期表现的是达到／超越／提高盈利预测的话，这将会是一个短视的决定。当管理层准备向分析师展示一份季度财务模型，应该自问是否有能力在该年年底之前完成相当于「异常年份」预测值至少四倍甚至八倍的业绩。

我们还看到管理团队提供给投行家的预测和提供给分析师的预测之间有著重大的分歧。有些公司出示数据范围，有些公司出示具体数值 — 还有些公司出示一份和「内部计划」略有差别的数据，其中细微的差别可能被管理层用来做某些投资决策。投资者关系战略顾问可以与管理层合作，更好地呈现财务预测，确保分析师在建立财务模型的时候留有适当保守的余地，也确保管理层认识到作为一家上市公司如何恰当地管理期望。这是在整个上市过程中最重要的步骤之一，也对在IPO之后的成功和建立良好记录的相关能力产生重大影响。

除了在展示财务模型过程中做好工作，跟进分析师的模型进度也是同等重要的。分析师是否在模型中恰当地反映了收入和支出的季节性？分析师的估值是在一个严格还是松散的范围内？这些问题的答案可能向市场传达负面的信息进而影响估值。

在提交招股说明之前便掌握分析师的预测数值是极其重要的，在提交之后更是如此，因为公司即将在招股说明书封面放上价格范围，分析师也准备对销售队伍进行宣讲。举个最坏的例子，我们知道曾有一家公司，IPO推迟了数月，在此期间过了一个财报季，但未能及时检视该季度成果及其对长远预期的影响。其结果是，分析师做出的财务预测高于管理层准备在IPO定价之后的第一季度做出的财务指导，由此导致了股票价格的大幅度下降和对管理层信誉的重大负面影响。

路演准备工作的至高重要性

一旦公司提交了F-1声明，便是时候将注意力转向路演的准备工作了。投资者关系战略顾问可以在准备路演演讲和投资者问答上发挥重要作用，因为我们掌握许多第一手的IPO经验和知识，包括投资者的关注点是什么，分析师会问什么样的问题，投资者期待听到什么样的答案。ICR具有几十年的行业经验并参与过许多IPO，能够从准备演示幻灯片，演讲稿到投资者问答各方面帮助公司。一个一流的投资者关系团队不是一个投行团队的替代品，而是使整个承销商和工作组如虎添翼。

我们经常见到的一个错误是公司投入了太多时间用于修改幻灯片，反复变换位置，新的幻灯片加入然后又取出。这个过程持续数周，而公司却花了很少的时间用于准备管理层演讲时真正要说的内容。

更重要的是，管理层是否准备好在演讲过程中回答疑难刁钻的问题？许多公司投入70%至80%的时间在制作幻灯片上，却只花20%至30%的时间练习演讲和准备问答。

我们建议公司在制作幻灯片上花费大约40%的时间，在练习演讲和问答准备各投入30%时间。一个公司可以拥有世界上最好的幻灯片，但如果演讲内容不易理解，投资者也会失去兴趣。此外，如果管理层无法有效地回答典型的CEO/CFO问题，再好的幻灯片和引人入胜的演讲也将黯然失色。投资者只有30分钟时间决定是否要参与投资公司的IPO，因此这30分钟内他们是拿著显微镜在检视管理层。

演讲培训

虽然投资者关系战略团队可以帮助准备正确的演讲，企业沟通团队在帮助培训管理层的过程中也是不可或缺的。不管公司管理层经营经验如何丰富，都能够从演讲培训中受益。我们最近参与了一个上市前的讨论会，同组另一位发言人曾担任投资银行家，现为一家上市公司的财务总监，他说自己曾接受演讲培训，并提醒每家公司都应接受这样的培训。

数字媒体

数字媒体在路演中的运用是另一个公司应该多加考虑的问题。招股说明书中的产品介绍或客户参考是一回事，但观看公司的客户在一段视频中分享其使用公司产品及因此获得的商业利益经验，会造成极其强大的宣传效果。在演讲开头先播放一段30至60秒的公司简介视频可以达到引人入胜的效果，而投资者关系顾问可以帮助投资者关注这样的消息。

ICR认为，对在美国上市的外国公司来说，数字媒体是IPO一个重要的价值体现。这一点对中国公司尤甚，因为他们经常要向一些对中国毫无了解的投资者解释他们的商业模式。而这批投资者往往有著深厚的行业知识，有时会将该行业在本国市场的表现套用在中国市场上，因而产生误解。

发行人选择投资者关系顾问时应考虑该顾问的数字媒体能力。ICR认为，最重要的是确保数字媒体的文字内容与公司披露的其他消息一致，并且最好由同一投资者关系团队制作。

投资者关系的基础工作

管理层准备路演的同时，应将投资者关系的相关基础架构准备到位，为公司上市提供必要的支持。这是另一个投资者关系顾问涉及的领域。系统地讲，投资者关系战略顾问应具备必要的资源以跟踪分析师对公司的盈利预测、获得股票研究报告、同业公司的电话会议实录、股东信息和市场决策信息等。

此外，公司必须在其网站上准备好投资者关系部分，大部分公司都决定将投资者关系网站的管理外包给第三方服务商如汤姆森或Shareholder.com。除了美通社、美国商业资讯提供的新闻稿发布服务之外，投资者关系战略顾问还应提供IPO定制服务套餐。所有这些服务的费用可能是每月几千美元到超过一万

美元不等，投资者关系战略顾问应该在帮助这些公司降低成本投入的同时，设立了一个「最佳实践」的基础架构。

在准备IPO期间应该准备的投资者关系关键基础设施项目清单应包括：

- 企业网站；
- 投资者关系网站；
- 电话会议、网络直播和新闻发布服务商协议；
- 电子邮件定向发送名单；
- 投资者关系美国电话热线；
- 投资者关系电子邮件；以及
- 市场营销文件（与F-1文件一致，但静默期之后才开始使用）。

与在资本市场上实际经验丰富的专业投资者关系团队合作，可以确保公司的投资者关系基础工作的一致性和全面性，并符合法律（包括信息披露）的要求。

战略性投资者关系服务

发行人还需要在定价前计划成立投资者关系支持系统。例如，管理团队成员在路演之前就应该确定谁来接应询问电话，谁来处理这些电话？谁有权代表公司与华尔街的专业人士对话？

此外，投资者关系计划应该在定价之前到位，并提前制定好IPO静默期之后至少十二个月的市场营销计划。发行人应该问的典型问题包括以下：

- 静默期结束的确切日期是什么时候？
- 首席执行官／首席财务官应该准备花多少天在参加投资者会议和非交易路演？
- 会不会有后续发行以及什么时候进行？
- 锁定期什么时候到期以及围绕著锁定期会有什么样的活动？
- 如何处理访问公司的请求？
- 哪些卖方分析师应该是公司争取额外研究报告的对象？
- 如何在季度财报准备期间自我设定一个静默期？

我们发现，大多数的管理团队，尤其是来自中国的团队，都对他们在上市后花费大量时间与潜在的分析师和投资者对话而感到惊讶。我们认为制定一个十二至十八个月的计划可以极大地帮助管理层规划市场营销、潜在的融资、主要投资者会议、分析师电话会议、财报日期、自我设定静默期，并选择适当的行业活动。我们还敦促客户有组织地安排在财报公布之后几天的工作重心，以确保他们明智地分配时间，与主要的证券分析师和投资者对话。许多刚上市的发行人能够理解到由这些资本市场经验丰富的专业人士帮助他们规划季报日程多么地重要。此外，这些对话交流的内容也关乎管理层的名声和信誉，因此管理层应该与顾问合作，传达清晰一致的讯息，以IPO前的信息披露和财报电话中的信息披露为基准管理市场预期。

成为一家上市公司之后，在静默期和信息披露的限制前提下，管理层应该马上对以下活动有所准备，而投资者关系顾问会执行所有这些活动：

- 新闻稿撰写；
- 准备业绩发布，电话会议讲稿准备和问答；
- 及时推广到最合适的卖方分析师；
- 在所有公开渠道对投资界保持一致的沟通；
- 股东情报分析和时间需求；
- 创建和发展一个详尽的投资者关系工作计划日程表；以及
- 维护Thomson first-call的分析师预测和模型。

内部或外包？

许多公司在IPO准备期间的常见问题之一是：「我们应该聘用一位内部的投资者关系经理，还是应该外包这项职能？」

我们相信，无论哪种方式，只要参与的专业人士具备对全球资本市场的深刻理解，公司都可以建立起一个内容丰富且有效的投资者关系项目。

中国发行人往往聘用一位专职行政工作的内部人员来处理投资者关系。如果这位内部人员能够获得一个有资本市场经验的专业机构的指导，并且该公司的首席财务官最终对所有对外通讯负

责，这也不失为一个很好的解决方案。否则，投资者关系将成为一个价值有限的行政职能，而不能承担一个旨在创造价值和降低风险的战略、积极的职能。

许多公司发现，专注的内部资源与外部的顾问工作在IPO阶段是可以完美结合的，尤其是如果发行人期望在定价之后获得显著的卖方分析师的覆盖报告以及整体曝光度提高的话。

ICR的团队主要由前卖方和买方分析师组成，能够在所有投资者关系的重要事务上提供相当的洞察力，我们的服务覆盖所有的战略和流程相关的事宜。此外，ICR每年投资数十万美元于数据服务，以确保我们可以使用各种必要的工具为我们的客户提供一流的投资者关系服务。而以同样价格雇用内部投资者关系无法达成与之媲美的效果，并暂且不考虑ICR与供应商的良好关系所带来的价值以及投资数据服务所节约的成本。

结论

IPO是在公司的运营周期中最令人兴奋的事件之一，因此必须妥善准备，为长远的成功之路打下基础。一个有经验的投资者关系战略顾问可以在整个IPO过程中为公司提供一个独特、独立的视角并增添价值。正是由于这些原因，大部分ICR的IPO客户在选择投行之后马上就开始和我们合作。

About ICR, LLC

根据2010年的O'Dwyer's调查，ICR是全美第九大的独立公关公司及排名第一的财经沟通公司。ICR专注从事投资者关系服务、企业沟通、危机管理，及数字媒体。ICR成立于1998年，代表超过275家主要上市公司，在诺瓦克（康涅狄格州），纽约，洛杉矶，旧金山，波士顿和北京均设有分部。ICR是业界增长最快的咨询公司之一，并一直稳居全美前几大独立的沟通咨询公司之列。

ICR亚洲已经帮助许多在亚洲经营的公司管理战略和财经沟通，业务覆盖中国大陆，香港，澳门和韩国。ICR亚洲团队服务来自不同行业的客户，包括医疗保健，科技／媒体／电信，消费，餐饮，博彩，清洁技术和工业。团队结构确保客户能够获得公司在北京以及美国办公室的全球专家小组不间断的支持，让客户可以有效地与他们的全球投资者24小时全天候连线。客户通常使用本国语言与ICR团队成员沟通。ICR亚洲拥有其他亚洲投资者关系公司无可比拟的IPO经验，深刻理解亚洲发行人面对全球投资者和国外信息披露法则所面临的巨大挑战。

没有华尔街经验的顾问如何给公司管理层提供资本市场咨询?

为上市或准备上市的公司管理企业品牌需要深入的企业和行业知识，以及对资本市场的先进了解。英睿拥有几十位前卖方分析师、基金经理和其他华尔街专业人士，是唯一一家结合第一手高层资本市场经验与传统企业沟通和公共关系专业人士的投资者关系公司。

英睿从几十年来每家客户所在行业汲取了专业知识和合作关系，因而具有独特的优势，能够指导公司管理团队在企业生命周期的每个阶段制定不同的企业沟通方案。

了解英睿如何重新定义企业和金融沟通，
请致电+86 10 6583 7500或访问www.ICRinc.com。

ICR Corporate Communications Redefined.

7

财经印刷公司的角色

当纳利洛文财经印刷有限公司，Paul Leatherdale

当纳利洛文财经印刷有限公司探讨中国发行者为了在美国进行公开发售而于纳斯达克市场上市的有关财经印刷需要。

有意在纳斯达克市场进行首次公开招股或以美国预托证券形式上市，除法律顾问、投资银行与会计师的协助之外，财经印刷公司也是　阁下重要的合作伙伴，帮助　阁下以最快捷、顺畅且轻松的方式完成计划。成功上市后，财经印刷公司会继续协助　阁下遵从美国的年度披露规定和进行债务及股本集资以支持　贵公司的增长。

财经印刷公司能为　阁下设计、管理、印刷及分派符合所需形式及格式的文件及监管规定存档，以遵守美国的财务法规并为　阁下投资者提供所需的资讯。

财经印刷公司积极协助多家亚洲企业完成在纳斯达克市场上市，其中包括世纪互联、炬力集成、高德导航、百度、中国医疗技术、泛华保险、携程、艺龙旅行网、环球天下教育科技、Infosys Technologies、慧荣科技、第九城市、斯凯、Tom在线和中星微电子，惟数目众多，未能尽录。

财经印刷公司与一般商业印刷公司有何分别？

财经印刷是一项极专门的工作，不仅懂得把信息印在纸上，其包含的服务可说是为金融界争分夺秒和瞬息万变的环境而量身订造。

除了提供监管方面的专业知识，财经印刷公司还具有广泛的客户服务功能，并会利用遍及全球的综合资源，提供全日24小时的服务。这些都是极其灵活有用的资产，让财经印刷公司能迅速满足上市项目和市场的特别需要。

财经印刷公司与商业印刷公司可以这样区别。首先，即使到了最后一刻，财经印刷公司仍能开机印刷，这是商业印刷公司所不及的。除了能够管理复杂的上市项目外，财经印刷公司亦提供财经文件结集服务和一整套电子工具，以简化文件编制和呈报程序。财经印刷公司拥有的基础设施，可确保文件于编制过程中每一个阶段的安全性和保密性；而其即场文件结集和客户服务团队可提供一切所需支持，协助贯彻完成各项职责。财经印刷公司的办公室布置与会议室设备，既能提高生产效率，又不减使用者的舒适程度。总的来说，这一切资源的精密配合，足以确保财经印刷项目能精准无误地按时完成。

一般来说，财经印刷公司会直接根据拟上市公司、投资银行、法律团队和会计师之间的讨论和尽职审查资料，即时按照美国证券交易委员会(证交会)规定的格式编制文件。

最大型、最著名的财经印刷公司的另一重点优势，就是规模大至遍及全球。今天，金融活动所涉广泛至再无疆界，具备环球规模对现今无远弗届的交易活动而言尤为重要。

财经印刷公司熟识证交会规定的技术要求，可协助拟上市公司的相关需要。例如，证交会要求部分上市项目信息须透过「电子数据收集、分析及检索系统」(EDGAR)呈交。具体来说，这套系统适用于许多首次公开招股和美国预托证券呈报文件，以及随后刊发的年报及定期报告。财经印刷公司跟商业印刷公司不同，前者精通EDGAR的操作，因而毋须外判这项重要工作。财经印刷公司亦是「可扩展商业报告语言」(XBRL)的专家，而XBRL是新规定向证交会提交财务资料的方式。服务全面的财经印刷公司具备高效工具，可按新格式编制和提交资料。

许多大型财经印刷公司都能提供多方语言的翻译服务，以满足客户的全球性项目的需要，并且具备完善的外语排版能力，可编制不同语言的招股章程初稿。对于计划在两个交易所上市的公司而言，这项服务十分重要。

股份上市的资料须予高度保障和保密。财经印刷公司熟悉这方面的要求，会在技术、设施和人员等多个环节加强保安措施。基于核数准则说明第70号进行的多重第三方认证，客户大可安心信

赖财经印刷公司能持续地妥善保障项目资料。

股份上市是一项争分夺秒和压力甚大的工作。财经印刷公司清楚客户对妥善完成项目的要求，因此特备一些设施以满足拟上市公司于这些敏感时期的需要。例如，客户的代表须经常长时间留在财经印刷公司，对注册说明书进行修改，以及修正、校对和修饰招股章程初稿。大型的财经印刷公司在全球各个主要金融中心，均可全年每天24小时提供先进的会议设备，并配置人员协助会议进行。

从以上多个例子可看出，财经印刷公司具备商业印刷公司所缺少的专长。正由于交易文件的重要性，客户公司需要财经印刷公司具备专业知识、增值功能、行事迅速和妥善环境等条件，以完成其首次公开招股和随后所需的披露工作。

编制重要文件

证交会规定拟上市公司须提供四大类文件，以完成美国的呈报程序，并规定文件须以打印版本或电子版本方式提交。该四类须呈报的文件如下：

- 注册说明书；
- 提供额外背景资料的注册说明书附件；
- 载有该公司的历史及投资价值等内容的招股章程初稿；及
- 载有最终定价资料的招股章程最终版本。

只有招股章程初稿和最终稿以印刷本呈交，所有其他文件则以纸张和电子版本送交证交会。

经过一连串严谨的尽职审查和资料核证后，拟上市公司便着手撰写注册说明书和招股章程初稿。证交会必定会审阅有关文件，而附件通常会经过多番修改。在这段忙碌的期间，财经印刷公司与客户公司会紧密合作，按证交会和其他监管机构规定的格式整理有关内容。

财经印刷公司会尽心尽力，跟进注册说明书的一切修改要求，直至最终稿问世，而其系统亦可同时显示文件所作的修改。此外，财经印刷公司也会同步运用其他电子工具，按时将文件安全送达客户公司，无论其所处何地。

财经印刷公司的明显优势，是能把招股章程终稿付梓印刷并送到承销团手上。需要以电子方式送交证交会的文件，财经印刷公司会将其转成符合EDGAR的格式，代为送交证交会。

需要把文件的电子版本放在公司的投资者关系网页内？财经印刷公司也可代劳。在主要金融中心(如纽约华尔街或香港)设有办事处的财经印刷公司，也可应客户要求，送交预印版本和电子版本予指定的收件人。

路演完毕便可为上市股份订价。届时，拟上市公司需要财经印刷公司预备招股章程最终稿，同时，该公司与其团队会于证交会424B规定所需资料提交前落实最终发售价。须提交的资料一经定稿后，财经印刷公司将于审批后刊印招股章程最终稿，并送交该公司的投资者。

财经印刷公司具备完成金融项目所需的工具和资源，是这方面的专家，有能力处理股份上市项目的一切后勤工作，让拟上市公司可集中精力整理招股章程内容，制定最终版本。财经印刷公司擅于将项目化繁为简，客户只须与其好好配合，便可在这关键时刻更轻松地处理事情。

与财经印刷公司的协作时间表

首先，公司须为其上市项目挑选一间财经印刷公司，而合作的投资银行及证券律师事务所可就此帮上一把。由于他们经常与个别的财经印刷公司合作，故可根据其经验提供宝贵意见。

与财经印刷公司协作的时间编排，视乎客户公司采用怎样的电子解决方案而定。具体来说，许多财经印刷公司可提供虚拟数据室，大大节省以传统及「有纸化」形式进行尽职审查所需的成本和时间。

财经印刷公司应属上市工作团队成员之一，而工作团队则须于预计初步呈交文件日期前两至三个月成立。拟上市公司若选择使用虚拟数据室进行尽职

审查，其与财经印刷公司的合作关系会更早展开。工作团队成员一般包括公司的主要代表、律师、承销商、会计师和顾问。财经印刷公司若于项目开始时便参与其中，便能熟识股份上市的所有事宜。

财经印刷公司会协助拟上市公司的律师，向证交会审查员提交机密文件。这是向证交会呈交文件的第一步。在数个月期间，证交会将提供审稿意见，而于首次透过EDGAR向证交会公开存档之前，或须进行多次修订。

这个期间，该公司人员会长时间留在财经印刷公司对注册说明书进行修改，以及修正、校对及修饰注册说明书。

利用招股章程初稿进行投资者路演后，该公司便会联同财经印刷公司为招股章程最终定稿，并完成证交会要求的任何电子文件呈递工作。然后，财经印刷公司便会进入项目的最后阶段 — 刊印和向当地和全球各地相关各方发送招股章程最终版本。

于美国呈交文件的守则和披露规定

拟在纳斯达克市场上市的公司须定期按照证交会的各个文件呈交程序，向具权益的各方披露信息。要赶及限期前完成所有呈交工作，须处理许多繁复的行政事宜。然而，这些文件必须按时呈交，以免分析员、投资者和证交会产生疑问。作为这些公司的合作伙伴，财经印刷公司可在这方面发挥作用，充分利用其专业知识和自行呈交文件工具，确保客户公司的文件能准时递交。

许多在亚洲交易所上市的公司正寻求以纳斯达克市场为第二上市交易所。若财经印刷公司拥有一个全球性综合平台，并于拟上市公司的根本市场(即香港和中国)拥有雄厚资源，便能尽量避免重复进行规定的相关申报工作。

所需呈交的文件类别包括：

- 年报 — 须于公司每个财政年度完结后六个月内呈交的详尽表格20-F，连同行政总裁及／或财务总监的确认函；
- 季度报告 — 应于公司首三季每季完结后尽快呈交的表格6-K，藉以详述公司的财务状况；
- 重大变动信息 — 因财务前景、公司控制权或会计师出现变化等的重大变动而应以电子形式呈报的表格6-K；
- 内部人员交易信息 — 股东规例规定须就公司内部人员(如高级职员、董事等)的股份买卖作出申报的适用表格3、4和5；及
- 须披露的其他信息 — 就申报重大持股量变化而须按附表13D和13G呈交的其他披露文件。

往后与财经印刷公司的关系

财经印刷公司会在上市公司往后的许多事务中继续担当重要的角色。大部分公司会选用同一家财经印刷公司协助应付每年的合规要求和未来的交易需要。

举例来说，这些公司会在下列情况与财经印刷公司合作：

- 编制、制作和向股东分发公司的年报，而年报通常以四色印刷；
- 编制所有关于股本或债务、合并、收购、要约收购和房地产投资信托等的二次发售资料(包括公司营运期间可使用的资产担保证券)；及
- 希望透过利用财经印刷公司的先进技术方案(包括虚拟数据室和内容管理系统)以优化内部和外部沟通。

选用同一家财经印刷公司处理相关项目，能减少公司收集资料的时间，并可确保善用以往处理项目所得的知识。因此，在选用财经印刷公司时不可掉以轻心。

选择财经印刷公司的主要准则

不论就短期或长期而言，为了对项目给予充分的支持，财经印刷公司须证明其在以下主要范畴具备专门优势：

- 业内声誉；
- 产品知识；
- 设备；
- 技术；
- 客户服务；及
- 整体项目管理。

若财经印刷公司能展示这些重点实力，则不论规模大小或地域范围，均能

确保项目可以准时地在预算范围内以圆满完成。

有能力适应瞬息万变的环境

由于市场时有波动、监管规例不断修订且科技一日千里，故资本市场亦急速多变。财经印刷公司须具备适当的基础设施，以便能从容适应变化而不会影响客户服务和表现。实力全面的财经印刷公司能迅速地善用资源，确保员工、技术和设备在极短时间内满足市场要求。

不仅是提供服务，更是合作伙伴

于资本市场的股份上市是一个繁复过程，压力甚大。公司上市后，日后亦须呈交许多强制规定的文件。进行财经印刷时，印刷品是整体服务中唯一的实物产品。财经印刷公司的行业知识、对证交会运作的了解，以及其可靠的上市项目管理技巧同样重要。具备这些专业能力的财经印刷公司，方可恒久准确预计客户的需要，并提供致胜的解决方案。

全球实力与地方执行能力

金融活动无远弗届。在现今市场，一个上市项目可以横跨多个洲、时区，并涉及多种语言。唯有拥有国际庞大分派网络、全日24小时提供的先进设备，以及可靠的客户服务，财经印刷公司才能承担复杂的国际上市项目。

任何全球股份发售，最终还得靠地方办事人员落实执行。因此，选择财经印刷公司的其中一个重点，是当地的设置是否理想，包括先进的会议中心、现场文件编制团队和印刷能力。当地支援加上全球服务平台，则不论上市项目的规模或范围如何，都能确保其按时完成。

上市项目的管理能力较文件处理能力更为重要

股份上市涉及多个不断开展的环节，包括建构起由不同专业人员组成的团队、处理数以百计的文件、无数次资料内容修订，以及时刻赶紧在限期前把文件送交证交会。财经印刷公司深谙「上市项目运作的艺术」，订有高效的工作流程，确保项目得以顺利推进。声誉良好的财经印刷公司会安排专责项目经理，一直协调好所有细节。他们对于每类呈报事项的格式规定，以及执行项目所需的时间，均了如指掌。此外，由于深知本身所具的资源，以及拟上市公司的独特上市项目要求，财经印刷公司能制定可行的项目计划，满足该公司的整体目标。

单源服务

财经印刷公司能为客户公司提供单源服务，会有多重好处。此服务包括：

- 全面文件编制和EDGAR服务；
- XBRL；
- 虚拟数据室；
- 翻译；
- 印刷；
- 邮寄和派递交收服务；及
- 全球派发。

利用单一服务提供者的好处包括：

- 提高成本及时间效益；
- 加强制作监控；
- 提高相同内容在将来其他交易时的利用率；及
- 提高保密程度。

服务的可靠程度

项目要取得成功，其中一个主要因素是能按时把文件送交目标收件者。在这方面，财经印刷公司能否准确和按时完成文件实至关重要。拟上市公司应向有机会合作的财经印刷公司查询有关完成工作所需的时间。这是衡量财经印刷公司提供核心服务能力的金科玉律。

舒适的工作环境

公司筹备上市时，公司团队会花大量时间去准备文件内容和修订稿件。上市项目根据既定时间表于市场进行，以获取最大回报。为加速文件编制，工作团队很可能会在财经印刷公司的会议室即场工作。财经印刷公司应拥有先进的会议室设备、充足的空间容纳人数众多的工作团队，并提供技术工具，包括高速互联网、会议电话、音响或视像系统、复

印机和投影机等标准设备。另也须提供参考资料、礼宾服务、内部餐饮及休息空间。

设置先进技术

财经印刷公司须使用技术工具以简化项目的执行程序。制作意念、分析技巧、流程管理及标准化程序方面的最佳应用方法，能大大促进生产力、提高服务水平的一致性及缩短完成时间。财经印刷公司亦须提供一系列易于使用的电子工具，协助进行财务资料沟通及呈报的不同环节。公司可向财经印刷公司查询有关其最近投放于市场革新及技术方面的预算，以判断该印刷公司是否站在业内技术前沿。

EDGAR

财经印刷公司须在透过 EDGAR 运用超文字标示语言格式(HTML)方面拥有广泛专业知识，因 EDGAR 比旧式美国信息交换标准码(ASCII)更可取。2002年，EDGAR 成为所有国际呈报文件强制采用的系统。HTML能为文件提高可阅读性，包括字型标示、超连结及图像，也能够轻易快速上载至投资者关系网页。证交会对呈交文件的时限规定十分严格。在设立初期，客户须与财经印刷公司合作一段较长时间，确保平稳过渡到这一技术。

大型财经印刷公司亦提供其他电子解决方案，包括频繁呈报(有关股份拥有权的表格3、4、5和6-K表格)的自行呈交工具。客户公司须确保财经印刷公司通晓证交会的新技术平台。例如，证交会现已接受 XBRL。XBRL 亦称为互动数据，是以标准为基础的方式，让用者自行编制、刊发、交换和分析财务报表以及当中所载信息。客户能否简化过程，很视乎其所选用的财经印刷公司可提供支援和执行新技术的能力。拟上市公司在挑选财经印刷公司前，可向财经印刷公司索取过往曾获此支援的客户名单，确保该财经印刷公司能满足这项要求。

虚拟数据室

财经印刷公司须能为客户提供虚拟数据室技术服务，以支援整个首次公开招股的过程。虚拟数据室能为客户提供高度信息保密的环境，让身处不同地方的工作团队成员能分享有关机密信息。此外，虚拟数据室可给予投资者一个简易平台进行尽职审查和分析，协助客户吸引更多投资者，也能于上市项目初期协助公司顾问和往来银行利用电子媒体发布信息。除了重要的安全优点外，虚拟数据室亦能：

- 建立敏感信息文件的单一记录存放处；
- 减低电邮负荷；及
- 消除因运输及快邮引致的延误。

总括而言，虚拟数据室的优点不限于首次公开招股阶段，亦适用于并购项目。

向股东和投资者发送文件

财经印刷公司应具体负责所有文件发送工作。为满足公司与股东及投资者沟通的需要，财经印刷公司须在境内外设有多个办事处。除了标准派递交收和追踪能力外，亦应对当地的独特邮递和运输规定有所认识。在现今的环境，财经印刷公司应提供电子文件送递服务。只有能提供齐全的服务配套，并具备全球送递平台的财经印刷公司，才能确保公司文件能按时送交适当的收件者。

总结

财经印刷公司深谙如何为财经相关活动提供综合传讯解决方案。除了执行项目的高效送递平台，财经印刷公司还须提供行业专门知识、专注的客户服务、创新的技术解决方案和环球印刷能力。财经印刷公司若具上述优势，并抱著追求卓越和顾客至上的服务态度，定能有效完成客户的项目和满足其需求。

传讯服务的翘楚

逾 146 年来，RR Donnelley 一直以诚信、实力和增长见称 — 随著新订规例和管治标准出台，客户公司须动用更多资源以作出及时、精确的财务报告，而我们亦按之革新服务，配合客户所需。

本公司拥有业内最庞大的印刷平台，并能善用资深的服务团队、全球性综合排版系统、翻译服务、Venue[SM] 虚拟资料库和高效能的 E-solution 服务，按时完成重大交易。我们成功处理过不少全球和美国最大的首次公开招股项目，包括通用汽车、Visa、人人网、中国明阳风电、乡村基快餐连锁、优酷网、巨人动力、新濠博亚娱乐（澳门）、中国医疗技术、中国电信、中国石油化工、搜狐网、日本电信电话和百度等美国上市项目。

RR Donnelley 规模庞大、行事灵活迅速，稳处业界领导地位，能简化最繁复的财务信息发布工作，并竭诚为客户服务。

RR DONNELLEY
ROMAN FINANCIAL

24小时客户服务 电话：852.2522.3803 • 电话：852.2850.6000
asiafinancial.rrd.com • venue.rrd.com
电邮：hongkong@rrd.com • hkroman@rrd.com

8

保险经纪人的作用

怡安（AON），Murray Wood、Regina Chen及Tom Cain

中国保险业持续快速增长，西方国家的大部分保险产品都可以在中国购买，这其中就包括董事高管责任保险(D&O)。D&O保险在中国发展十年，尚属起步阶段。随著时间的推移，客户在购买决策过程中更加深思熟虑，很大程度上也是由于越来越多的索赔以及因此而增长的保费。客户更加关注D&O产品本身及其承保范围，而不仅仅侧重于保费。同样地，主要的保险公司为了追求自身业务发展，也开始在中国扩大自己的市场份额。如今，能够提供D&O产品的保险公司数目与日俱增，有助于行业竞争。最后，大多数客户改用专业保险经纪人，帮助他们在D&O保险市场寻找更优的报价以及最佳的风险管理建议。

公司首次公开募股证券面临风险，其后作为上市公司面临风险，以及招聘有才之士进入董事会和管理层的需求，使得董事及高级管理人员责任保险对每个健康营运的公司来说都非常必要。不管这个公司实体是私有公司还是上市公司，董事及高级管理人员责任保险（下称「董事险」）在保护个人及企业实体方面都发挥著重要作用。若要使该公司资产效益最大化，公司必须与一位专家级的经验丰富的专业保险经纪人一同精挑细选董事险。此类保险经纪人可以提供必要的同行信息分享，并且抱著精益求精的决心，为公司力争最合适的保障范围。在公司首次公开发售历程中，购买董事险是不可或缺的一环。

董事险的作用

绝大多数上市公司都购买董事险。大多数尚未进行公开发售的公司甚至在上市前就购买私有公司董事险，为他们准备公开上市的那一段时间提供保障。的确，具备相当资格的董事在加入公开上市公司的董事会前通常都会坚持要求完备的董事险，对于计划进行首次公开发售的公司而言，此项要求更甚。董事险有两个基本目标：首先是保护董事及高管其个人的资产，因其面临著由于为公司服务而引起的法律责任的风险；其次是，通过保险补偿给董事及高管，以及承保公司自身应对第三方索赔来转移公司的资产负债表风险。董事险保单的「保险部分A」— 即「A部分」— 保护个人在得不到公司补偿时所发生的抗辩和和解费用（不可补偿损失）。「保险部分B和C」— 即「B部分和C部分」— 保护公司的资产负债表。B部分代表公司补偿给董事及高管抗辩和和解的费用，C部分为公司自身遭到与证券诉讼关联产生的抗辩和和解的费用提供保障。A部分无免赔额，但免赔额适用于B部分和C部分的索赔。

董事及高管的个人保护

在为公司服务时，董事及高管面临个人责任。该责任可以是由被指称的不当行为而引发无数的起诉人索赔而引起的，被指称的不当行为包括：

- 与雇佣有关的违约；
- 注册声明书中的误报（例如，根据1933年证券法第11条的相关规定）；
- 献售股东违规（例如，根据1933年证券法第12条的相关规定）
- 控制人违规（例如，根据1933年证券法第15条的相关规定和／或1934年证券交易法第20条的相关规定）；
- 后分配报备文件的误述（例如，根据1934年证券交易法第10条的相关规定）；
- 萨班斯法案违规；
- 违反州及联邦反托拉斯法案及交易条例，
- 违反州蓝天法；及；
- 违反反海外腐败法

如果公司未能为个人在面对责任时提供保护，公司将在搜寻有才之士担任董事及高管时会遭遇巨大困难。所谓第一层保护来自于公司为董事及高管在履行其职责时面临的责任提供的补偿。该补偿是在符合该公司注册地法律下，通过公司内部章程和／或个人补偿协议所提供的。

当公司不能补偿这些个人时，董事险保单的A部分会开始保护他们。其结果是，当所在公司无法提供保护时，董事险就会作为他们个人资产的最后一道防线。

当A部分保险范围起效时，至少存在三种情况。公司无法进行个人补偿的最常见情形就是这家公司丧失偿付能力— 没有可以用来支付其董事及高管的辩护、清算和／或诉讼成本的资金。另一种情况是，法律禁止公司给个人提供补偿，或者是由于法律规定公司补偿范围非常狭窄。最后一种是公司控制权（特别发生在并购）发生变化，导致前任董事或高管可能很难获得补偿。此类不可补偿损失的保险保障来自于董事险保单的A部分。

每一份传统董事险保单都包含A部分保险，但责任限额 — 即保单收益 — 与保护公司资产负债表的B部分和C部分共享。为了向董事及高管提供更多的保

护，绝大多数公司应积极考虑购买独立的、专门的A部分保单作为其董事及高管计划的一部分。这种保险安排广泛为美国公司接受。在中国，A部分超赔保障概念还处于婴儿时期，然而，随著市场不断发展，我们预计更多中国公司会采纳这一做法。

通过恰当协商，一份精心策划的A部分保单不但可以为个人提供专门限额的保护，还可以提供更为宽泛的保险条款。理想中的A部分保单应该提供「条件差异」保障，当其条款比基础A部分计划的条款更宽泛时，它可以让保单下拉并及时应对索赔做出反应。该等条件差异A部分保单为美国行业内标准保单。

公司的资产负债表保护

过去，大多数董事及高管诉讼的直接后果是公司(或其保险公司)支付了可补偿损失金额，导致董事险保单B/C部分成为转移资产负债表风险的一项重要手段。

当B部分和C部分的保险保障被起动时，公司首先支付自留额(免赔额)部分。随后，保险公司代表公司支付保单条款中承保的所有损失余下部分。在购买董事险时，争取最低的免赔额非常重要。免赔额越低，公司将越早在诉讼时得到保险金。在大多数情况下，为了节省保费而提高自留额所带来的保险成本的降低，远不及低自留额带来的潜在收益，这点即使在小金额的损害案件中也适用。

需要多少董事险？

在现实中，董事的责任在法律上来讲是无限的，没有确切的法律机制规定董事责任的上限。导致的结果是，当要做出决定选取合适的保险金额时需要更多的分析意见来支持。通过分析证券集体诉讼和解金额大小的发展趋势，公司可以预计可能会因为诉讼导致的索赔金额。在从1996年至今的2,905件证券集体诉讼案件中，仅有8起案例最终走到审判程序。这些案件的结果是，4件被告获胜，4件原告获胜(其中一件随后翻案)。余下的证券集体诉讼案件最终都是通过和解(或还未结案)，而没有任何法官或陪审团的裁决书。众多的与实际案件相关的变数使得使得要在模拟案件中准确预计和解金额不大现实。但是，通过一系列的数据分析，还是可以安排与公司独特的风险承受力相适应的董事险。其中最重要的数据是历年赔案结果和同行业购买保险行为。

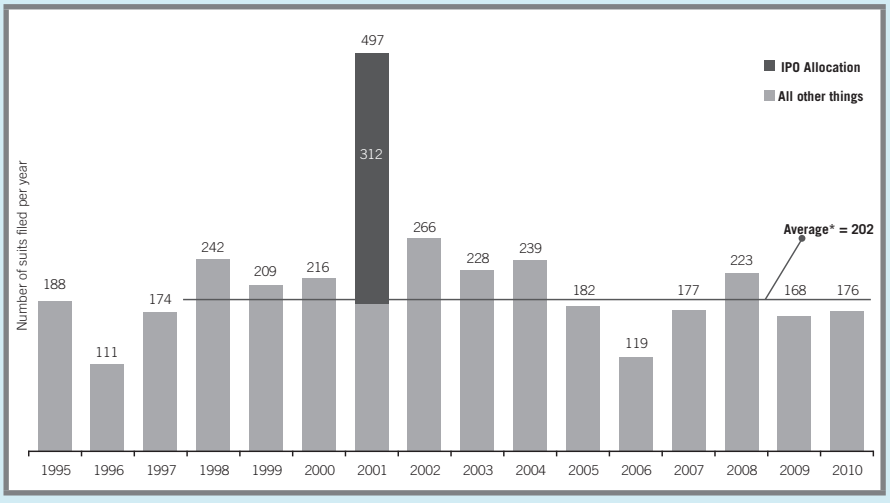
索赔频率

根据Cornerstone调查的每年出版物证券集体诉讼文件-2010年回顾显示，2010年总共有176件证券集体诉讼，高于前年168件。从1996到2009年的年均起诉案件数量为202件。

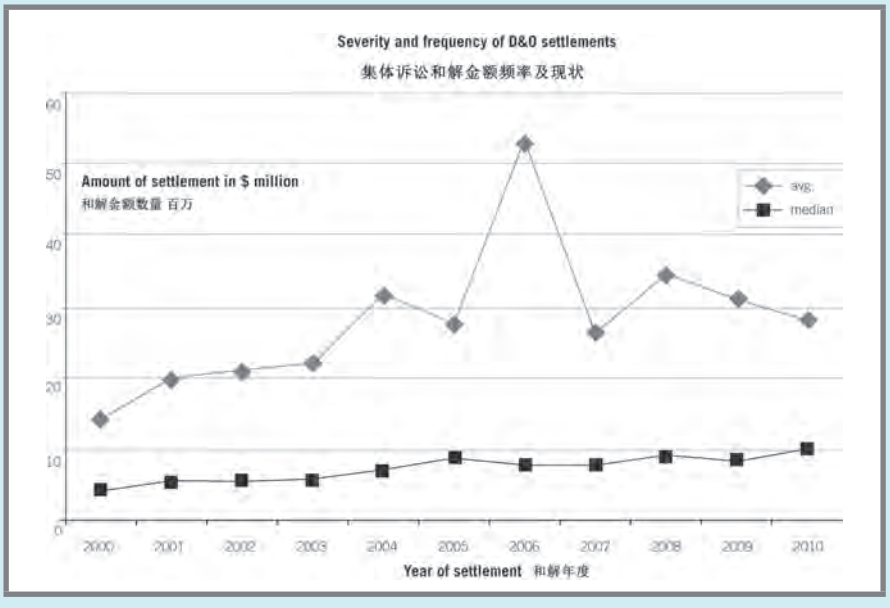
索赔偿付

根据怡安统计数据显示，2010年总共有105件证券集体诉讼案件和解结案，其中6件和解金额超过100,000,000美金。2010年中等和解金额数为10,000,000美金，所有和解案件平均和解金额为28,150,000美金(不包括那些高于1,000,000,000美金的案件)。根据NERA研究(2010趋势年未更新)68%的和解金额少于20,000,000美金。

表一


IPO Allocation
All other things
Number of suits filed per year
Average* = 202
188
111
174
242
209
216
497
312
266
228
239
182
119
177
223
168
176
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010

表二


Severity and frequency of D&O settlements
集体诉讼和解金额频率及现状
Amount of settlement in $ million
和解金额数量 百万
avg.
median
60
50
40
30
20
10
0
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
Year of settlement 和解年度

针对中国公司的证券集体诉讼

截止2011年3月，已经有44家在美国上市的中国公司被告，第一件针对中国公司的索赔案件发生在2001年。下图显示了这些案件的时间。最近的(2010)诉讼索赔活动矛头直指通过反向并购而在美国上市交易的公司。

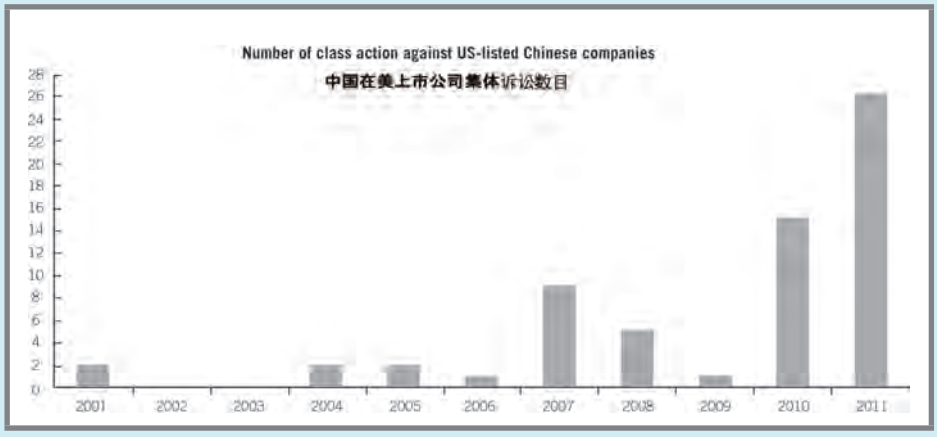
对于在美国上市的中国公司来说—怡安数据显示总计12起诉讼与首次公开募股和／或募股相关，其中9件在首次公开募股后一年内提出。另外，怡安数据显示，在这些首次公开募股相关的案件中有额外的被告，当中包括首次公开募股的承销商(11起案件)，大股东(3起案件)和控制股东(1起案件)。

中国公司和解案件

针对中国公司的最大公开披露的和解金额为16,000,000美金，大约折合索赔金额的5%。这一和解于2010年初公布，与可再生能源行业的一家公司首次公开募股相关。第二大公开披露的和解金额也是和一家可再生能源行业公司关联—和解金额为4,500,000美金，于2010年初提出。

这些记录的索赔数据仅可作为部分参考信息，一家公司必须评估历史性数据如何与公司自身的风险有相关联。多个分析可起到作用：

表三



- 根据预期市值分布历史性的和解金额；
- 预估市值缩水幅度大小和历史和解金额数量的关系；
- 就历史性和解金额分布模拟潜在股票动荡。

就多种不同的诉讼数据分析，公司的风险可帮助公司基于其独特情况和对风险的承受能力，更为便利的选择合理的董事及高级管理人员责任保险限额。

同行业数据在董事险中担任非常重要的角色

购买董事险的决策者认为分析其同行业公司在买的保险及付出多少保费是对其非常有用的资讯。他们使用这类信息再次确保董事会和管理层购买的董事险在

表四

和其它同市值和行业分类公司相持的水平。有效利用同行数据能帮助公司谨慎决策以平和个人资产的保护和公司风险的转移。

公司关注多个同行业购买保险数据点，包括价格、项目结构、自留额和项目大小(如，责任限额)。预估何谓一个合适的同行业首先要考虑市值(因为投资人损失的数额大小是计算潜在和解金额的决定性因素)，然而，行业是第二

个需要考虑的有益因素，因其通常与发生诉讼的可能性相关。

中国公司还需要考虑谁是他们真正的同业者，仅仅是那些在美国上市的中国公司，还是包括所有的在美国上市的具有同样特征(行业、市值、资产大小等等)的公司。参考后者有一个强大的支持点，就是提起诉讼的律师一般驻扎于美国、提起诉讼的投资人一般都是美国的，并且可适用法律是美国证券法的。

不幸的是，由于公司并不被要求在公开文件中披露其董事险信息，因此同行业数据很难能获得。市场上有几个董事险购买趋势的来源可供参考，但是其中很多都存在缺陷。一家俱备相当资历的董事险经纪人，是继外部律师外，能提供保密的同行业购买信息和帮助公司分析其适用性。怡安利用一系列包括行业、市值、资产总额、营业额和员工人数在内的数据，生成实时的同行业信息报告。

每一个公司的董事险保单都是一个单独协商而成的合同，这意味著保单和保单间条件和条款会有很大程度的不同。因此，当参考同行业数据时，尤其是考虑价格时，公司不应该忽视保单条款和条件的质量的重要性。如果保障范围远远在平均水平之下，那么一项很便宜的董事险项目可能并不是好交易。分析同行业保障条款和条件都需要董事险经纪人和公司法务仔细比对。

中国董事险市场

中国买家正在不断熟悉董事险产品和了解市场发展，第一张为中国公司制作的董事险保单产生于1996年。

今天，有些在国际市场上广为人知的董事险保险公司已走入中国市场。在新加坡和香港这两个保险市场集中地，也聚有为数众多的董事险保险公司。

并非所有董事单都拥有一样条款，首次公开募股公司面临独特保障范围问题

付给保险公司的保费当然是一个重要的部分，然而董事险保障范围决不应给忽视。当发生索赔时，保单使用的措辞将会决定该索赔是否存在保障。市场不存在所谓全球通用的董事险保单供所有保险公司使用。虽然每家保险公司的保单都是从大同小异的基础保障而生成，但当中存在的重大区别是公司必须要懂得的。每家公司的董事险条款都可以进行协商，使其在原基础格式上含有众多修正新加条款以符合保障范围要求。

一份董事险保单包括几个关键部分

- 承保协议
- 定义
- 除外条款(和除外条款的排外条款)；和
- 一般条款和条件(包括如选定辩护律师、索赔通知程序和向保险公司提出争辩的机制等)

在协商董事险保单过程中，修正(如批单)可加之于保单的任何部分。有时候保险公司会加修正条款限制保障范围，给被保险人一个不那么有利的保单。在其他情况下，通过有经验的董事险经纪人，保险公司会同意修正保单条款使得保单对董事、高级管理人员和公司更加有利。因此，有必要在公开上市公司董事险保单起效前给充分协商条款预留足够的时间。

除了在议定董事险保单过程中的典型协商，有志上市的公司面临几个特别的保障范围问题。比如，很多公司在登记注册文件前就持有一张非公开上市公司董事险保单。重点是这样的保单没有广泛的限制注册文件和证券交易保障的除外条款，非上市公司保单需要经过小心设计来保障董事和高管(以及公司)在交易日之前的活动，尤其是当计划中的首次公开募股没有发生的时候。当公司开始股票交易，公开上市公司的董事险保单就开始起效。因此，公开公司的董事险保单需要提前准备好，这样在公司公开上市时就不会断了保障。

招股说明书责任保险

寻求上市的公司可能拥有的一个独特的选项是购买一张单独的，仅承保首次公开募股和相关登记注册文件的风险的董事险保单，。这种保险通常被称之为「招股说明书责任保险」或者「公开发行证券

保险(POSI)」。招股说明书责任保险保单是一份多年期，且保险公司不得中途注销的保单。这样减少了年度董事险保单的续保风险。招股说明书责任保险保单有可能提供几个关键保障延展，如可能扩展承保上市公司对其承销商和财务顾问的补偿责任。招股说明书责任保险保单还可能扩展承保被保险人的控制股东和限售股东。最后，招股说明书责任保险保单可能被视为与公开发行相关的费用而受到会计事务所的有利的会计入账对待。招股说明书责任保险保单和董事险保单两者的协调使得如何精确拟写保险合同显示出它的重要性，是否可以购买招股说明书责任保险有赖于当时保险市场的现状(索赔和保费趋势)，以及保险公司的风险承保意愿。

一项专注于购买并确保董事险的程序将会让公司取得最大利益

制定有效的董事险策略和进程表能确保首次公开募股公司顺利完成董事险的安排。首次公开募股的过程本身对企业管理团队造成极大的需求，获得一份精心定制的董事险对于招募董事会成员，留住老董事会成员至关重要。有效的董事险可作为避免诉讼而引起的个人资产流失的最后一道防线。

确定战略并尽早建立时间表

在注册文件递交之前，公司应在保险经纪人帮助下，制定董事险安排策略。经纪人和公司应该合定一个时间表，在董事险安排过程中，认真环绕著和首次公开募股相关的的数个关键日期最大化利用董事及高管的时间。

向董事险保险公司展示并区分您的公司相对同行是属于低风险公司

董事险经纪人必须向公司进行广泛的风险概况分析，了解如何为公司安排董事险。一个详尽而全面的关于公司营运、财务和治理的评述将会确保公司将自己和剩余的同行业公司区分开来。董事险保险公司会回报展示出低风险的公司，而对于处在被保险公司划分为高风险行业的公司，它们必须用更多的时间去展示于其他同行不同的一面。

如果公司能成功阐明自身为低风险一族，公司所得到的可选择董事险保险公司会明显较多，有很多保险公司愿意提供给非上市和上市公司董事险。除了其他的不同以外，保险公司的行业针对性、信用评级，以及理赔声誉都有所不同。因此，公司应该预留时间和保险经纪人一起，筛选最适合的保险公司。尽管因为上市程序本身带来时间压力，通过仔细计划的程序将会确保充足时间考虑这些变数。

细选董事险经纪人作为可信赖的顾问，为您管理未来执行者责任风险

高效协商一份精心定制的董事险需要一家充分了解这个特殊保险领域的专业经纪人，公司应仔细考量它的经纪人以确保公司在这个重要的保险项目上获得专家级的服务。

选取董事险经纪人的关键考量要素

- 经纪人是否有经验为非上市公司和上市公司操作董事险保险项目？
- 经纪人是否使用咨询方法使公司在执行者责任风险管理上获得一个值得信赖的顾问？
- 经纪人是否明确标出清晰和详尽的，又配合首次公开募股进程的保险购买协商程序？
- 当决定保险项目限额和结构时，经纪人可以提供何种独门和深具意义的同行参考信息？
- 经纪人是否在为首次公开募股公司安排董事险上是否有专业经验，使得它熟知最新的市场发展？
- 专业服务董事险的团队有多少人？该团队如何确保自己随时获悉市场最新发展？
- 在发生诉讼时，经纪人是否专注于提供为公司需求订造的索赔管理和申诉主张？
- 经纪人是拥有一个熟悉美国商业习惯的全球性网络？

在首次公开募股前通过经纪人协商而制定的董事险对公司未来的董事险有著长远的影响，一份精心设计的保险项目意味著的差别是在诉讼来临时得到保障或没有一份具意义的保险。由于董事和高管个人资产存在潜在被损害的危险，保险项目出错将会导致灾难性的结果。对于一家首次公开募股的公司来说，也许再也没有比董事险更重要的保险了。确保能有合适的专家协助安排保险是企业的一个迫切需求。

关于怡安

怡安公司(纽交所代码：AON)是全球领先的风险管理、保险和再保险经纪人，提供人力资源解决方案和外包服务。通过中怡全球59,000名员工，怡安集团创新和效率性的风险管理、工作解决方案向不同特色的客户增值服务。怡安的全球化行业领先资源和专家技术服务于世界上120多个国家。

怡安在中国

怡安在中国通过合资公司中怡保险经纪有限责任公司经营，中怡是第一家获得授权的中外合资经纪人，现有289名员工。中怡上海总部指导工作，分公司北京、南京、成都和广州为其下公司。怡安拥有合资公司50%股权，中粮集团拥有另50%股权。

怡安荣誉

被2008、2009和2010年欧洲货币杂志和保险观察誉为全球最佳的经纪人。怡安同时位列2008、2009年根据商业零售、包销、再保和个人经纪收益排名全球保险经纪人商业保险名单前排。A.M.Best评级根据2007、2008和2009年保险经纪人收益情况将怡安评为全球第一保险经纪人。怡安被评为2007-2010年度最佳保险中介，2006-2010最佳再保中介，2009-2010最佳风险管理人，商业保险2007-2009最佳员工福利咨询公司。访问http://www.aon.com获得更多怡安信息，访问http://www.aon.com/unitedin2010了解更多怡安全球合作伙伴和赞助曼联信息。


AON
Aon提供世界领先的风险咨询，
保险与再保险经纪，
以及人力资源服务
欲了解更多，欢迎浏览公司网站：
aon.com

投稿者简介

中怡保险经纪有限责任公司(AON)

中国上海市浦东世纪大道88号金茂大厦4105室
邮编：200121
电话：+86 21 3865 8000
传真：+86 21 5049 8331
www.aon-cofco.com.cn

Murray Wood
亚洲区运营总监
murray.wood@aon.com
Murray Wood先生为怡安金融及专业服务亚洲区运营总监，负责全亚洲的金融类保险产品。他在保险界有20多年的专业经验，自1988年开始成为金融保险的经纪人。Wood先生从1991年开始为怡安服务，先后在怡安悉尼、伦敦、香港任职，目前在怡安新加坡工作。2006年他被派驻香港负责怡安金融及专业服务亚洲地区业务。2011年，Wood先生被派驻新加坡继续担任亚洲区运营总监，业务重点为东南亚地区。

Regina Chen
陈敏秋
亚洲区总监
regina.chen@aon.com
陈敏秋女士为怡安香港金融及专业服务部门负责人，2011年担任地区总监。她的业务重点在大中华区，涵盖香港，中国大陆及台湾地区。陈女士在赢得及保留客户策略、市场关系、员工发展、运营报告以及产品业务开发策略方面给与各地区支持。陈女士1989年加入保险业，1999年加入怡安金融及专业服务部门。

Tom Cain
唐可安
亚洲区总监
tom.cain@aon_cofco.com.cn
唐可安先生于1999年加入怡安，2006年派驻怡安集团在中国的合资公司中怡保险经纪有限责任公司，帮助发展金融及专业服务中董事高管责任保险。2011年，唐先生担任金融及专业服务部门亚洲区总监。在中怡之前，唐先生在美国马萨诸塞州波士顿怡安金融及专业服务部门工作了7年，为一系列大型上市企业到小型私有企业客户的管理责任需求服务。在加入怡安之前，唐先生曾担任管理责任保险核保长达13年。

花旗银行

香港中环花园道3号花旗银行广场花旗银行大厦39楼
电话：+852 2868 8888
www.transactionservices.citigroup.com

Valentina Chuang
庄文华
董事
valentina.chuang@citi.com
庄文华女士是花旗银行亚太区董事，负责亚洲区存托凭证部门销售业务。庄女士于1997年加入花旗银行台北分行，作为证券服务产品经理和销售经理，负责证券业务相关服务的设计与推广，主要的客户为资产管理公司、海外存托凭证发行公司及境外机构投资人(QFII)，及为官方机构海外投资提供托管服务。自2004年起，庄女士开始从事存托凭证的销售及花旗银行在中国区域存托凭证业务的拓展工作，并于2008年被任命为大中华区总监负责存托凭证及信托代理的业务。

在此之前，庄女士就职于怡富公司，负责基金管理的市场行销及产品开发业务。庄女士毕业于台湾国立政治大学经济系，并获得该校的工商管理硕士学位。

高盛(亚洲)有限责任公司

香港皇后大道中2号长江集团中心68楼
电话：+852 2978 1000

中华人民共和国北京市西城区金融街7号英蓝国际中心18楼
邮编：100140
电话：+86 10 6627 3000

www.gs.com

ICR, Inc

441 Lexington Avenue, 4th Floor,
New York, NY 10017, United States
Tel +1 646 277 1200
Fax +1 646 277 1201
www.icrinc.com

Ashley Ammon De Simone
董事总经理，英睿亚洲领导
ashley.desimone@icrinc.com

Ashley De Simone在英睿主管亚洲业务，领导分布于纽约和北京的团队为三十多家亚洲客户提供他们所需的在美金融沟通服务。自从2003年加入ICR，她已经为许多高知名度的国内和国际上市公司在美国、欧洲和亚洲策划资本市场沟通策略，建立IPO、公司分拆、并购交易、危机沟通、以及机构投资者营销工作。她的投资者关系工作经验植根于她之前在荷兰银行和CIBC世界市场（现为奥本海默）作为股票分析师分析营销服务和广告行业的经验。自从2006年为英睿发起亚洲业务，De Simone女士已经指导超过30家亚洲公司，在传统的IPO过程中，筹集资本环节和在美国上市后这段期间，以不断的沟通、确保透明度以及高标准的公司治理为准则，活跃于美国资本市场。她在中国推动投资者关系行业的一系列努力已经收到亚洲媒体的关注，包括CFO世界杂志，她还组织了许多面向上市公司的教育型活动，包括策划英睿的美国IPO论坛以及面向公司内部的「投资者关系101」的培训活动。

De Simone女士以优等生资格毕业于波士顿大学，并且从伦敦政经学院取得政治学和经济学的学习证书。担任股票研究分析师时，她还拥有Series 7和63证照（现已过期）。

解瑞明
高级副总裁，英睿亚洲北京办公室
jeremy.peruski@icrinc.com

Jeremy Peruski（解瑞明）先生自2004年开始在中国工作和生活，曾在一些业内领先的企业从事有关业务拓展、投资银行和风险投资方面的工作，具有深厚的金融和财务经验。在加盟ICR之前，他是维科媒体(Welkin Media)的合伙创始人之一，该公司主要为科技、媒体和通讯相关行业的企业提供咨询服务，曾服务北京电视台（中国最大媒体公司之一）和LoongStore（中国首个云计算公司之一）等媒体公司。他还曾在联想集团的公司财务团队工作，主要负责建立和管理该公司的全球业务拓展团队。作为集团财务管理团队一员，他还负责全球并购项目的鉴定、尽职调查以及与并购目标企业的谈判工作。在移居中国之前，他曾在Friedman, Billings, Ramsey & Co.（一家专业投资银行）担任机构客户销售副总裁长达六年。解瑞明本科毕业于美国密歇根州立大学，并于乔治华盛顿商学院获得MBA学位。

郑文蕾
副总裁，英睿亚洲北京办公室
wenlei.zheng@icrinc.com

郑文蕾作为优等生毕业于美国威斯康星大学麦迪逊分校，拥有财务、国际商务与东亚研究三个学位。在2009年加入英睿之前，郑文蕾曾在美林集团杠杆融资组投资银行部就职。她还曾在Capital Valuation Group担任私人公司估值工作，并服务于宝洁的国际市场研究部门以及瑞银的个人财务管理部门。她持有Series 7和Series 63证书。郑文蕾能熟练使用英语、普通话和法语交流。

罗兵咸永道会计师事务所

香港中环太子大厦22楼
电话：+852 2289 8888
www.pwc.com

白岚
合伙人，审计部，中国
laura.butler@cn.pwc.com

白岚在美国市场公开发行，私人募资和日常的注册文件报送中的美国会计准则，国际财务报告准则及美国证监会相关技术问题等方面有超过20年的丰富经验。在这其中有12年是从事中国公司相关的工作。她领导著中国北方区美国上市企业审计团队，该团队有超过50名员工，在通讯、科技和媒体行业公司的复杂会计及列报问题方面有丰富的经验。白岚是美国注册会计师。她现在在中国北京工作。

肖敏
合伙人，审计部，中国
min.xiao@cn.pwc.com

肖敏是普华永道美国上市企业审计团队的合伙人，专门负责美国会计准则、美国证监会报告和资本市场交易。在过去的15年间，她协助了多家美国、欧洲及亚洲的公司进行美国会计准则和国际会计准则的转换及其它跨国上市的项目。近年，肖敏一直致力于为中国和香港公司在美国上市提供服务。现在肖敏常驻在中国上海。

邓颖雯
高级经理，审计部，中国
yulanda.wm.tang@hk.pwc.com

邓颖雯是普华永道美国上市企业审计团队的高级经理，拥有十年以上经验，专注于协助多个行业的公司进行会计准则的转换，首次公开招股，私募，合并及收购等项目，根据美国会计准则国际财务报告准则，提供丰富的审计和会计咨询工作。邓颖雯的客户包括互联网、制造业，电讯业，教育及高科技等企业。邓颖雯现驻于香港工作。

当纳利洛文财经印刷有限公司
香港中环毕打街20号
会德丰大厦20楼至21楼
电话：+852 2522 3803
传真：+852 2524 2977
www.asiafinancial.rrd.com

Paul Leatherdale
亚洲营业部执行董事
paul.leatherdale@rrd.com

Paul Leatherdale是当纳利洛文财经印刷亚洲营业部执行董事。他在1987年加盟公司，目前驻守香港。Leatherdale先生最初在当纳利伦敦办事处工作，负责处理与银行和法律界客户的关系，在任职期间，他曾成功完成多个金融市场项目，包括首次公开招股、并购、债务交易，以及其他许多项目。

过去16年来，Leatherdale先生处理过源自当纳利香港办事处的亚洲销售计划，职责是专注争取亚太区内各方面的商机，包括股权、债务、并购、年报、合规、虚拟数据室和电子解决方案等方面。Leatherdale先生于70年代在日本长大，在亚洲区生活和工作历时24年。他毕业于伦敦里士满学院(Richmond College)，获授企业管理学士学位。Leatherdale先生为已婚，育有两名孩子。

美国盛信律师事务所
香港中环花园道3号中国工商银行大厦35楼
Tel +852 2514 7660
Fax +1 212 455 2502
www.stblaw.com

陈磊明(LEIMING CHEN)
盛信美国律师事务所香港分所合伙人
lchen@stblaw.com

陈磊明是盛信美国律师事务所香港分所的合伙人，经常就资本市场事宜提供法律咨询。他长期从事(包括私有化在内的)各类股票和债券的发行。陈先生的业务重点在中国，曾在中国一些最显赫的民营化项目和一些大公司证券发行项目中起到重要作用，这些公司包括中国石油天然气、中国移动、中银(香港)、中国银行、中国电信、中国平安保险等。他还代表中国公司参与了一系列重要的跨境收购项目，这些公司包括中国移动和中国石油天然气。

陈先生在近期多项法律界调查中被评为中国／香港资本市场领先律师之一，这些调查包括 *Euromoney's Guide to the World's Leading Capital Markets Lawyers, Chambers Global Guide to the World's Leading Lawyers for Business, Chambers Asia Guide to the Asia's Leading Lawyers, Asialaw Leading Lawyers* 及 *The Asia Pacific Legal 500*。

陈先生于1994年在加拿大多伦多约克大学 (York University) 的 Osgoode Hall 法学院获得法律博士学位，并于1981年毕业于中国杭州师范学院。他可讲流利的普通话和上海话。

联络方式：

费大年 (DANIEL FERTIG)
盛信美国律师事务所香港分所资深律师
dfertig@stblaw.com

费大年是盛信美国律师事务所资深律师。他于2002年加入本所后，曾在纽约总部信贷银行部工作。费先生在2003年7月加入香港分所后，参与了大量股票和债券发行与并购交易。在他参与的多宗资本市场交易中，他既代表过承销商也代表过发行公司，其代表性项目包括博纳影业、如家酒店连锁、搜房网、分众传媒、盛大游戏、康鹏化学、泛华保险、阿里巴巴、中国阿斯特、中华映管、中华电讯、铼德科技以及LG飞利浦。费先生参与的并购项目包括分众传媒收购框架传媒、聚众传媒和好耶广告网络，他还从事私募股权交易。

在开始律师生涯之前，费先生曾在台湾和北京学习中文，并曾在北京外文出版社和一家美国律师事务所的北京分所等机构从事翻译工作。费先生中文流利。

费先生于2002年毕业于美国哥伦比亚大学法学院 (Columbia Law School)，获法律博士 (J.D.) 学位。他分别于1994年和1999年获得美国弗吉尼亚大学 (University of Virginia) 文学学士和美国哥伦比亚大学文学硕士学位。

联络方式：

林光祥 (CHRIS K. H. LIN)
盛信美国律师事务所香港分所合伙人
clin@stblaw.com

林光祥于2001年成为盛信美国律师事务所合伙人，目前就职于香港分所。他在获得美国哥伦比亚大学法学院 (Columbia Law School) 法律博士 (J.D.) 学位后，于1992年加入本所。林先生精通中文，积极参与了本所在大中华地区多项公司融资、兼并收购、直接投资及项目融资项目。他在2004年被美国权威杂志 *IPO Lawyer Yearbook* 评选为全球首次公开发行最优秀律师之一。他所参与的具有代表性项目包括美国证券交易委员会注册的股本证券发行，如凤凰新媒体、斯凯网络、博纳影业、中国利农国际、乐语、安博教育、柯莱特信息系统、昌荣传播、汉庭连锁酒店、康鹏化学、ATA等中国公司的美国上市发行项目，以及友达光电、南茂科技、中华电信、和信超媒体、矽品精密科技、及联华电子等台湾公司的美国上市发行项目。

联络方式:

通过纳斯达克OMX交易技术的不断发展和变革，纳斯达克OMX的企业解决方案可以强有力地促进全球商业的沟通与交流。从投资者关系到企业的沟通与治理，纳斯达克OMX都是第一家，也是唯一一家致力于拥有和经营企业解决方案的交易所。纳斯达克OMX的企业解决方案可以帮助世界各地的上市或私人企业降低风险，同时最大限度的提高效率，增加透明度。欲知详情，请访问 www.nasdaqomx.com/corporatesolutions.

NASDAQ OMX® | Corporate Solutions

NASDAQOMX.com/corporatesolutions

WWW.NASDAQOMX.COM

NASDAQ OMX®